JUDICIAL REFORM INDEX

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Introduction

The Judicial Reform Index (JRI) is an assessment tool implemented by the American Bar Association's Rule of Law Initiative. It was developed by the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), with the purpose to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable the ABA, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

The ABA embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, the ABA acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, the ABA has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES and Freedom House's NATIONS IN TRANSIT. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

> (1) the reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).

> The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: "[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy." Larkins, *supra,* at 616.

Methodology

In designing the JRI methodology, the ABA sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges";* and *Council of Europe's European Charter on the Statute for Judges.* Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications. The ABA has continually integrated new standards and guidelines into its JRI process, such as the *Bangalore Principles on Judicial Conduct*.

Drawing on these norms, the ABA compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, the ABA developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to other regional concepts, of judicial structure and function. Thus, certain factors are included that an American or a European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, the ABA reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, the ABA determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a "scoring" mechanism was one of the most difficult and controversial aspects of this project, and the ABA debated internally whether it should include one at all. During the 1999-2001 time period, the ABA tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI's Executive and Advisory Boards, as well as outside experts, the ABA decided to forego any attempt to provide an overall scoring of a country's reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, the ABA did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive, neutral, or negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the

statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral." *Cf.* Cohen, *The Chinese Communist Party and 'Judicial Independence': 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from "a completely unfettered judiciary to one that is completely subservient"). Again, as noted above, the ABA has decided not to provide a cumulative or overall score because, consistent with Larkin's criticisms, the ABA determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and — as JRIs are updated — within a given country over time.

The follow-on rounds of implementation of the JRI will be conducted with several purposes in mind. First, it will provide an updated report on the judiciaries of emerging and transitioning democracies by highlighting significant legal, judicial, and even political developments and how these developments impact judicial accountability, effectiveness, and independence. It will also identify the extent to which shortcomings identified by initial JRI assessments have been addressed by state authorities, members of the judiciary, and others. Periodic implementation of JRI assessments will record those areas where there has been backsliding in the area of judicial independence, note where efforts to reform the judiciary have stalled and have had little or no impact, and distinguish success stories and improvements in judicial reform initiatives. Finally, by conducting JRI assessments on a regular basis, the ABA will continue to serve as a source of timely information and analysis on the state of judicial independence and reform in emerging democracies and transitioning states.

The overall report structure of follow-on JRI reports as well as methodology will remain unchanged to allow for accurate historical analysis and reliable comparisons over time. However, lessons learned have led to refinements in the assessment inquiry which are designed to enhance uniformity and detail in data collection. Part of this refinement includes the development of a more structured and detailed assessment inquiry that will guide the collection and reporting of information and data.

Follow-on JRI reports will evaluate all 30 JRI factors. This process will involve the examination of all laws, normative acts and provisions, and other sources of authority that pertain to the organization and operation of the judiciary and will again use the key informant interview process, relying on the perspectives of several dozen or more judges, lawyers, law professors, NGO leaders, and journalists who have expertise and insight into the functioning of the judiciary. When conducting the follow-on assessments, particular attention will be given to those factors which received negative values in the prior JRI assessment.

Each factor will again be assigned a correlation value of positive, neutral, or negative as part of the second-round and subsequent JRI implementation. In addition, all follow-on assessment reports will also identify the nature of the change in the correlation or the trend since the previous assessment. This trend will be indicated in the Table of Factor Correlations that appears in the JRI report's front-matter and will also be noted in the conclusion box for each factor in the standardized JRI report template. The following symbols will be used: ↑ (upward trend; improvement); ↓ (downward trend; backsliding); and ↔ (no change; little or no impact).

Social scientists could argue that some of the assessment criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, the ABA decided to structure these issues so that they could be effectively answered by limited questioning of a

cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the JRI assessment process is to help the ABA — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. The ABA also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country's judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. The ABA offers this product as a constructive step in this direction and welcomes constructive feedback.

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Bosnia and Herzegovina (BiH) JRI Assessment Team

The BiH JRI 2006 Analysis assessment team was led by Wade Channell, with the assistance of BiH Senior Staff Attorney Nebojša Milanović. The team received invaluable support from the ABA Rule of Law Initiative staff in Sarajevo and Washington, including former and current Country Directors Steve Austermiller and Zelah Senior, Interpreter/Translator Lejla Efendić, Field Finance Manager Sanin Muftić, Interpreter Fahrudin Kulić, and Program Officer Lucy Gillers. Olga Ruda, Co-Coordinator of the Judicial Reform Focal Area of the ABA Rule of Law Initiative provided research and analytical assistance, served as editor and prepared the report for publication. The conclusions and analysis are based on interviews that were conducted in BiH during November 2005 and relevant documents that were reviewed through the end of February 2006. Records of relevant authorities and individuals interviewed are on file in the Washington, DC office of the ABA and are kept confidential. The assessment team is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

Executive Summary

Brief Overview of the Results

The 2006 Judicial Reform Index (JRI) for Bosnia and Herzegovina (BiH) reflects a number of positive achievements in the area of judicial reform that were implemented in the country since the 2001 JRI, most notably the establishment of a single High Judicial and Prosecutorial Council (HJPC) responsible for all judicial appointments and discipline; reappointment of all judges pursuant to an objective procedure and criteria; adoption of new procedural legislation that introduced an adversarial system of justice; establishment of Judicial and Prosecutorial Training Centers (JPTCs); and enhanced accountability and transparency of the judicial system. However, because of the newness of many of these changes, it is still too early to determine the effectiveness or impact of the reforms.

Overall, of the 30 factors analyzed in the assessment, the correlations determined for 13 factors improved from 2001 to 2006, while none of the factors suffered a decline. The factors that were rated positive in 2001 continued to be positive in the current assessment, and were joined by three other factors upgraded to positive in 2006, bringing to seven the number of factors receiving the highest grade. Seventeen factors received neutral correlations in this report, including 11 that had received negative grades in 2001. Only six factors continue to carry negative ratings, including those relating to poor budgetary and financial safeguards for the judiciary, as well as the judicial review of legislation, enforcement of judgments, and the absence of effective case management systems. The correlations for a total of 13 factors were below positive in both 2001 and 2006 and were not upgraded in the current assessment, although the analysis of many of these factors reveals optimistic signs of progress and awareness of the need for further improvement. These conclusions suggest that much work still remains to be done as BiH seeks to strengthen its judiciary.

Positive Aspects Identified in the 2006 BiH JRI

- Perhaps the greatest achievement of the BiH judicial reforms to date has been the ***establishment of the unified HJPC at the national level*** in 2004, in place of the state and entity-level councils that were created in 2001. This independent body has the mission to secure an independent, impartial and professional judiciary, and is entrusted with broad competencies in the areas of judicial appointments, discipline, and numerous other aspects of judicial system management and administration. Most significantly, the establishment of the HJPC has enabled the appointment and discipline of judges to be conducted ***without political interference*** and ensured the application of ***uniform standards in judicial appointment and discipline*** throughout BiH.

- One of the recent key reform initiatives involved revamping of the judicial system through a ***process of reappointment of the entire BiH judiciary***, which was largely completed during 2003-2004. As a result of a generally accepted opinion that the professional quality of the judiciary was poor and its level of independence was low, as well as the strong political influence present during the post-war judicial appointments, a decision was made to declare all existing judicial positions vacant and open for competition to all qualified legal professionals. Approximately 30% of incumbent judges were not reappointed. During the reappointment process, the HJPC used, for the first time, ***new and objective criteria and procedures for judicial selection***. The reappointment process also enabled ***greater ethnic and gender balance*** throughout the judiciary. Despite raising some doubts among judges about the security of their life tenure, there is universal consensus that the reappointment initiative was a major success.

- The ***Office of Disciplinary Counsel*** was established within the HJPC as a professional regulatory body charged with ***exclusive authority to receive, hear, and decide on***

complaints of alleged judicial misconduct. Public information about the judicial complaint and disciplinary process is widely disseminated, and the investigation is conducted in a transparent and objective manner, although the actual practice is still in its formative stages. On a less positive note, several judges have expressed ***concerns over the integrity of the new system***, noting that it is subject to abuse by parties or their attorneys dissatisfied with the outcome of the case. The vast majority (98%) of complaints filed in 2005 were deemed unfounded; nonetheless, the threat of a complaint can serve as a form of intimidation for some judges.

- A related measure involves the ***promulgation of the Code of Judicial Ethics*** in November 2005, which is based largely on the internationally recognized Bangalore Principles of Judicial Conduct. The adoption process included substantial vetting and input from the judiciary and the legal community as a whole in order to ensure participation, knowledge, and ownership. The JPTCs are now developing courses and materials for regular delivery of judicial ethics trainings.

- Since 2004, all sitting judges are required to attend at least four days of ***mandatory continuing judicial education*** annually, which encompasses courses on substantive and procedural law, court administration, and advocacy skills. Training is provided by the separate JPTCs of each entity, which operate under the supervision of the HJPC. The new system has received favorable reviews from both judges and other stakeholders. The scheduled introduction of the mandatory judicial orientation program and the proposed merger of the two JPTCs into a national system are widely regarded as positive future steps.

- Effective January 1, 2006, a ***uniform judicial salary and benefits structure*** was introduced throughout BiH, which substantially eliminated the disparities in judicial salary levels between the entities. Judicial salaries are universally regarded as sufficient to attract, retain, and support qualified judges without having to resort to other sources of income. At the same time, the recent changes resulted in reduction of some judicial salaries, which raises a possibility of challenging their constitutionality. It should be noted, however, that ***non-judicial court staff salaries have not been raised for many years***, and their average salaries are currently 5 to 9 times lower than judicial salaries. This disparity has led to resentment, lack of motivation, and petty corruption among court personnel.

Concerns Relating to Inefficiency of the Judicial System

- The majority of BiH courts are facing an ***overwhelming backlog of unresolved cases***, which included over 1.3 million cases as of December 31, 2005. A number of strategies and efforts are being developed to deal with these problems, including attempts to increase the use of reserve judges and judicial associates. Unfortunately, the use of these mechanisms has been constrained by lack of sufficient funding.

- ***Problems with enforcement of judicial decisions*** continue to plague the courts. Litigants commonly resort to filing ***frivolous appeals intended to delay enforcement proceedings***. Despite new legal provisions requiring enforcement even if there is an appeal, in practice most judges continue to stay enforcement upon such a challenge. This practice leads to delays and a growing backlog of enforcement cases. A further complication is that enforcement actions may be initiated on the basis of “authentic documents” (such as unpaid utility bills). As a result, enforcement cases constitute about 63% of the overall case backlogs in the BiH courts, the majority of these cases being undisputed small claims from utility companies. It is estimated that it would take the judiciary ***five years to dispose of the current enforcement backlog***, even if no new claims were filed.

- A contributing problem is the ***absence of efficient case management systems and procedures*** for filing and tracking cases. The manual systems that exist in most courts mean that case files are susceptible to misplacement. This situation also complicates obtaining an accurate picture of backlogs and active cases. Recent positive developments included introduction of a common case numbering system for all courts, as well as testing and piloting of more efficient case management systems in model courts, which are eventually expected to be implemented in all other courts.

Concerns Relating to Financial Resources

- A persistent problem, which is largely the result of BiH's complex political structure, is the ***fragmented and cumbersome budgetary structure for the judiciary***. The judiciary is currently funded out of 14 separate budgets, and there are 14 "appropriate" ministries of finance and/or justice, as well as legislatures involved in the process. Although the HJPC performs an advisory role during the budget drafting process and is charged with advocating for adequate and continuous funding for all courts, in practice the ***HJPC's proposed funding levels are rarely taken into account in full***. Poor communication and distrust between the various actors involved and other uncertainties in the budgeting process lead to frustration, inefficiency and little satisfactory input by the judiciary into budget decisions. HJPC's proposals to establish a single source of funding for the entire judiciary are yet to be translated into concrete measures.

- As a result of these inefficiencies, the ***funding allocated to the courts is typically insufficient to cover their basic operating expenses***, such as telephone service, postage, and payment for utilities. In addition, court presidents are given ***no discretion to manage their assigned budgets*** according to their realistic needs by moving funds between line items. Indeed, relevant ministries of justice involved in the process may manipulate the approved budgets by withholding amounts due for payment of judicial salaries in order to pressure or punish judges in politically sensitive cases. Courts often have to carry over the expenses incurred in one year to the next year's budgets and have accumulated substantial debts.

- Inadequate budgetary allocations mean that the HJPC must ***frequently resort to seeking financial contributions from international donors***. For instance, almost ***no allocations are made in judicial budgets for capital expenditures***, despite the deplorable condition of most court buildings. Several courthouses have been renovated with international funding, but much more resources are needed. Funding is also not available to provide courts and judges with adequate ***security arrangements***. Similarly, supplying the judiciary with ***computers*** and other equipment, while satisfactory, is almost completely donor-dependent, and arrangements will need to be made to provide for local support of maintenance and replacement of the existing equipment. Finally, insufficient budgets has also meant that the judiciary is often unable to address backlogs and other inefficiencies that plague many courts.

Bosnia and Herzegovina Background

Legal Context

Bosnia and Herzegovina [hereinafter BiH] declared independence from the Socialist Federal Republic of Yugoslavia [hereinafter SFRY] in March 1992. As a result of the devastating war of 1992-1995, BiH was administratively divided into two entities: the Bosniak (Muslim) and Croat-dominated Federation of Bosnia and Herzegovina [hereinafter FBiH] with the capital in Sarajevo, which is divided into ten cantons; and the Serb-dominated Republika Srpska [hereinafter RS] with the *de facto* capital in Banja Luka. The General Framework Agreement for Peace in BiH (commonly referred to as the Dayton Agreement) established a national government above the two entities, albeit with limited powers. Subsequent international arbitration also resulted in the creation of the independent Brčko District, a multi-ethnic enclave that does not fall within the jurisdiction of either entity.

The present decentralized structure of the government in BiH is laid out in the Constitution that makes up Annex 4 of the Dayton Agreement [hereinafter BIH CONSTITUTION]. In addition, each of the entities has its separate Constitution [hereinafter FBIH CONSTITUTION and RS CONSTITUTION]. The Brčko District has no separate constitution, but is governed under a quasi-constitutional Statute promulgated in December 1999 to implement the Final Award of the Arbitration Tribunal for the Dispute over the Inter-Entity Boundary Line in the Brčko Area [hereinafter BRČKO DISTRICT STATUTE].

The domestic government institutions in BiH are subject to significant international oversight. The Office of the High Representative [hereinafter OHR], under the auspices of the United Nations Security Council and Peace Implementation Council, was established pursuant to Annex 10 of the Dayton Agreement and granted broad powers for implementing civilian elements of the Agreement. Among other powers, the High Representative [hereinafter HR] may impose legislation, veto legislation adopted by any domestic legislative body, and remove public officials from office.

The BiH JRI 2006 analysis encompasses the judiciaries of the national government and the two entities, as well as the Brčko District. Where there are significant differences in the laws and practices in these jurisdictions that are relevant to this analysis, they are noted in the text.

History of the Judiciary

The judiciary in BiH is largely the product of the legal traditions of the Austro-Hungarian Empire (which gained administrative authority over the country in 1878 and annexed it in 1908) and the communist SFRY. As a federal republic of the latter, BiH had its own Constitutional Court, Supreme Court, and lower courts within the federal system. Following the Bosnian war and the decentralization of the country into four jurisdictions, separate and completely autonomous court systems and judicial bodies have been established in each of these jurisdictions.

Over the past several years, steps have been undertaken towards centralization of certain oversight functions related to the judiciary. At the beginning of 2001, the Independent Judicial Commission [hereinafter IJC] was established as the lead international agency for judicial reform in BiH. It had a broad mandate to guide and coordinate reform efforts to establish an independent, qualified, and efficient judiciary, and to assist local judicial, prosecutorial, and governmental institutions in the reform process. The IJC was involved in several significant reforms undertaken over the course of the three years of its existence, until its closure on March 31, 2004. One of the most important achievements was the initiation of the reappointment process in 2003-2004, in which all judges were required to apply for their positions in an open competition.

In 2004, a unified High Judicial and Prosecutorial Council [hereinafter HJPC] replaced the IJC and the relevant state and entity-level Councils that were created in 2001. This was made possible through a March 2004 Agreement on the Transfer of Certain Entity Responsibilities through the Establishment of the HJPC of BiH. The nation-wide HJPC was established as an independent body with the mission to secure an independent, impartial, and professional judiciary. It has broad competencies in the areas of judicial appointments, performance evaluation and discipline, education and training of judges, judicial ethics, budgetary issues, as well as numerous other aspects of judicial system management and administration. It is made up of 15 members, 11 of whom are elected by the judiciary itself and chosen from among judges and prosecutors from all levels of judiciary; two attorneys elected by entity bar associations; and two members appointed separately by the Parliamentary Assembly and the Council of Ministers of the BiH. The establishment of the HJPC has enabled the appointment and discipline of judges to be conducted without political interference and ensured the application of uniform appointment and discipline standards throughout BiH.

Structure of the Courts

The structure of the courts in BiH reflects the country's complex political framework. The cumbersome structure has substantial impact over many of the shortcomings of the judiciary in BiH. The courts in each of the major jurisdictions are set forth below.

State of BiH Courts

There are two judicial institutions at the state level: the BiH Constitutional Court and the Court of BiH. The ***Constitutional Court*** is composed of nine justices, including three international members selected by the President of the European Court of Human Rights, four members selected by the FBiH House of Representatives, and two members selected by the RS Assembly. The Court has exclusive jurisdiction over disputes arising under the BiH Constitution between the entities, the state and an entity, or between state institutions. Since January 1, 2004, the Court also has jurisdiction over all human rights cases.[1] Finally, it has appellate jurisdiction over issues under the BiH Constitution arising out of a judgment of any court in the country. Upon referral from any court, the Constitutional Court determines the compatibility of a law with the BiH Constitution and the European Convention on Human Rights and Fundamental Freedoms [hereinafter ECHR].

The ***Court of BiH*** (commonly known as the ***State Court***), which currently has 20 judges, was legally created in 2000 but was not physically established until 2002. The Court has original jurisdiction in criminal and administrative matters. The criminal department of the Court has two separate panels: one for war crimes, and one for organized crime, economic crimes, and corruption. There is also an appellate department that hears appeals in these criminal cases. The administrative law department of the State Court has jurisdiction to review actions of state bodies and bodies of the Brčko District, and to hear appeals in administrative matters from the Brčko Basic Court. In addition, the Court of BiH has appellate jurisdiction over certain extraordinary legal remedies set forth in procedural laws. Finally, it is the final instance for claims arising from the election process.

[1] In 1996-2003, a specialized ***Human Rights Chamber***, a judicial body with statewide jurisdiction established by the Dayton Agreement, was charged with hearing human rights claims. It was subsequently merged into the BiH Constitutional Court. In addition, there is a five-member ***Human Rights Commission*** responsible for addressing the backlog of cases inherited from the Chamber.

FBiH Courts

The vast majority of cases in the FBiH are brought before the municipal and cantonal courts. ***Municipal courts*** may cover the territory of one or more municipalities and are funded by the cantons. As of February 2006, there were 28 municipal courts in FBiH, employing 304 judges. They serve as courts of first instance in most civil cases, and in criminal cases where the potential punishment is imprisonment for up to 10 years. In criminal cases, judges no longer direct the criminal investigation, but instead rule on indictments or hear the charges. They also review and approve plea agreements. In addition, municipal courts handle employment cases and land registration, as well as bankruptcy matters.

Cantonal courts are established within the jurisdiction of each of the ten cantons. As of February 2006, there were 115 judges sitting in these courts. In addition to reviewing appeals of municipal court decisions, cantonal courts have original jurisdiction in criminal cases punishable by more than ten years of imprisonment and in administrative disputes pertaining to municipal and cantonal agency decisions.

The ***FBiH Supreme Court***, presently consisting of 22 judges, is the highest court of appeals in the FBiH for matters involving questions of Federation law. It has a separate administrative law division, which hears challenges to administrative decisions of FBiH agencies, and may also review certain cantonal court decisions in administrative disputes through a procedure of an extraordinary legal remedy. Decisions of the Supreme Court are final and binding.

The ***FBiH Constitutional Court*** may review the compatibility of any FBiH or local law with the FBiH Constitution upon the request of selected high government officials or upon referral by the FBiH Supreme Court or a cantonal court. It also has jurisdiction over disputes between cantons; between a canton and the FBiH; between a municipality and its canton or the FBiH; between the FBiH institutions; and over vital national interests at the entity level. Its decisions are binding and not subject to appeal. The Court is composed of nine justices appointed by the FBiH House of Peoples (the Parliament's upper house) upon the HJPC's recommendation. Of these judges, three are Serbs, three are Croats, and three are Bosniaks.

RS Courts

Basic courts have a role similar to that of municipal courts in the FBiH. They serve as first instance courts in criminal cases punishable by less than 10 years of imprisonment and in a variety of civil, property, employment, and commercial cases. As of February 2006, there were 19 basic courts in RS, which employed 142 judges.

District courts are established in each of the five of administrative districts. Similarly to the cantonal courts in FBiH, they hear appeals from basic court decisions and serve as first instance courts in criminal cases punishable by imprisonment of more than 10 years. They also have exclusive jurisdiction over administrative disputes. Further, these courts exercise jurisdiction in certain specialized procedures, such as extraordinary legal remedies. As of February 2006, there were 57 judges in the district courts.

The ***RS Supreme Court***, which consists of 15 judges, is the highest appellate body in the RS. It has jurisdiction over appeals from all district court rulings, including in administrative matters through a procedure of an extraordinary legal remedy. The Court is also charged with ensuring a uniform enforcement of law throughout RS.

Similarly to its FBiH counterpart, the ***RS Constitutional Court*** decides whether legislation within the entity comports with its Constitution. Pursuant to the RS Constitution, anyone can initiate proceedings before the Court; however, only the President of the RS, the National Assembly, and the government can initiate proceedings without restriction. The Court itself may initiate proceedings to assess the constitutionality of laws. There is also a separate Council for

Protection of Vital National Interests, as in the FBiH Constitutional Court. Decisions of the RS Constitutional Court are binding and enforceable throughout RS. The Court is composed of seven justices appointed by the RS National Assembly upon recommendation of the HJPC.

Brčko District Courts

Basic Court is the first instance court of general jurisdiction, handling civil, criminal, administrative, and other cases. ***Appellate Court*** is the highest appellate body in the District and handles all appeals from the Basic Court, as well as all claims for extraordinary legal remedies. Both courts have jurisdiction to determine whether any provision of the District law is incompatible with the BiH Constitution or the Brčko District Statute. As of February 2006, there were a total of 22 judges on the Basic and the Appellate Courts.

Conditions of Service

Qualifications

Judicial candidates must have formal university-level legal training and pass the bar exam before taking the bench. A two-year legal internship is required as a prerequisite to sitting for the bar exam. There is an exception to passing the bar exam, applicable to law professors with 15 years of teaching experience for appointment to the BiH Court, or with 10 years of teaching experience for appointment to the entity Supreme Courts. In addition, future judges are required to have at least three years of additional legal experience (as a judicial assistant, prosecutor, or attorney) for entry-level positions on municipal/basic courts. Appointments to higher courts require greater experience: five years for cantonal/district courts, and eight years for the entity Supreme Courts, the Brčko District Appellate Court, and the BiH Court.

Appointment and Tenure

The HJPC has exclusive authority and jurisdiction over the selection and appointment of all judges, except those on the Constitutional Courts, which are under the oversight of respective entity legislatures. Candidates apply directly to the HJPC for advertised open positions, and are selected on the basis of such criteria, as education, experience, professionalism, and reputation. Once appointed, all judges have life tenure until the mandatory retirement age of 70, unless removed for cause in connection with criminal or disciplinary sanctions.

Training

The separate Judicial and Prosecutorial Training Centers [hereinafter JPTCs] were created in the two entities in 2002. The functions of these public bodies are to provide induction training courses to judicial candidates and advanced professional training for judges, under the direction and supervision of the HJPC. Judges of the Brčko District may attend courses given by either JPTC, as can judges of each entity. While no formal induction programs were provided at the time of the JRI interviews, starting in 2006, new judicial appointees will begin to receive mandatory induction training on judicial practice and administration based on the curricula developed jointly by the HJPC and the JPTCs. In 2004, the HJPC introduced mandatory continuing judicial education for a minimum of four days per calendar year, focusing on substantive and procedural law, court administration, and advocacy skills. The JPTCs are developing courses on an ongoing basis and are working closely with donor organizations to establish a formal, regular schedule of course offerings.

BiH JRI 2006 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues present, ABA/CEELI would underscore that these factor correlations and conclusions in the BiH JRI 2005 possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the BiH JRI 2001. ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. ABA/CEELI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

Judicial Reform Index Factor		Correlation 2001	Correlation 2006	Trend
I. Quality, Education, and Diversity				
Factor 1	Judicial Qualification and Preparation	Negative	Neutral	↑
Factor 2	Selection/Appointment Process	Neutral	Positive	↑
Factor 3	Continuing Legal Education	Negative	Neutral	↑
Factor 4	Minority and Gender Representation	Negative	Neutral	↑
II. Judicial Powers				
Factor 5	Judicial Review of Legislation	Negative	Negative	↔
Factor 6	Judicial Oversight of Administrative Practice	Neutral	Neutral	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Neutral	Neutral	↔
Factor 8	System of Appellate Review	Positive	Positive	↔
Factor 9	Contempt/Subpoena/Enforcement	Negative	Negative	↔
III. Financial Resources				
Factor 10	Budgetary Input	Negative	Negative	↔
Factor 11	Adequacy of Judicial Salaries	Positive	Positive	↔
Factor 12	Judicial Buildings	Negative	Negative	↔
Factor 13	Judicial Security	Negative	Negative	↔
IV. Structural Safeguards				
Factor 14	Guaranteed Tenure	Positive	Positive	↔
Factor 15	Objective Judicial Advancement Criteria	Neutral	Neutral	↔
Factor 16	Judicial Immunity for Official Actions	Positive	Positive	↔
Factor 17	Removal and Discipline of Judges	Neutral	Positive	↑
Factor 18	Case Assignment	Negative	Neutral	↑
Factor 19	Judicial Associations	Neutral	Neutral	↔
V. Accountability and Transparency				
Factor 20	Judicial Decisions and Improper Influence	Negative	Neutral	↑
Factor 21	Code of Ethics	Negative	Neutral	↑
Factor 22	Judicial Conduct Complaint Process	Neutral	Positive	↑
Factor 23	Public and Media Access to Proceedings	Neutral	Neutral	↔
Factor 24	Publication of Judicial Decisions	Negative	Neutral	↑
Factor 25	Maintenance of Trial Records	Negative	Neutral	↑
VI. Efficiency				
Factor 26	Court Support Staff	Neutral	Neutral	↔
Factor 27	Judicial Positions	Neutral	Neutral	↔
Factor 28	Case Filing and Tracking Systems	Negative	Negative	↔
Factor 29	Computers and Office Equipment	Negative	Neutral	↑
Factor 30	Distribution and Indexing of Current Law	Negative	Neutral	↑

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion	***Correlation: Neutral***	***Trend: ↑***

Judges must have both legal education and practical experience, with increased experience requirements for higher level courts. Judges are not required to participate in additional courses before taking the bench, although orientation courses are currently being developed.

Analysis/Background:

All judges must be citizens of BiH who have formal university-level legal education and have passed the bar exam. LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA art. 21 (O.G. BiH No. 25/04) [hereinafter HJPC LAW]. An internship of two years in legal activities (for example, a law office, prosecutor's office, or court) is required as a pre-requisite to sitting for the bar exam. LAW ON BAR EXAMINATION IN BOSNIA AND HERZEGOVINA art. 2 (O.G. BiH No. 33/04). There is one exception to passing the bar exam: law professors with 15 years experience may qualify as judges of the Court of BiH, while those with 10 years of teaching experience may be appointed to the entity Constitutional Courts. HJPC LAW arts. 23(3), 24(3). After passing the bar exam, candidates for the bench must have at least three years additional legal experience before they can qualify for appointment as judges. Enhanced experience is required for appointment to appellate positions and higher courts. These requirements are summarized in the Table below.

MANDATORY EXPERIENCE REQUIREMENTS FOR JUDICIAL APPOINTMENT

	1st Instance	2nd Instance	Supreme
FBiH	3	5	8
RS	3	5	8
Brčko District	3	8	n/a
BiH	8	n/a	n/a

Source: *Id.* arts. 23, 25-28.

Constitutional Courts judgeships do not require an express number of years; however, the length of practical experience and academic experience and achievements are taken into consideration. *Id.* art. 24(2). Judges of the BiH Constitutional Court must come from "distinguished jurists of high moral standing. BIH CONSTITUTION art. VI.1.a. As a practical matter, Constitutional Court judges are chosen from senior jurists and practitioners.

Several developments should permit improvement in the overall qualifications of judges. As noted in the 2001 JRI, quality of legal education has varied significantly over the past 15 years, especially during the war years. One of the outstanding problems facing the law faculties is the fact that existing law school curricula are still based on laws that have been replaced or amended, as law schools are in need for new legal materials, especially teaching materials. Professors are generally paid only for presentation of curricula in class, not for development of new materials. Moreover, many professors do not understand the recent changes in the law and are not necessarily equipped to lead curriculum development. As a consequence, new lawyers

are graduating with more knowledge of recent legal history than of current law. Once out of law school, there is no mandatory continuing legal education requirement for lawyers to support development of ongoing legal training and accompanying materials. The JPTCs in the two entities are beginning to develop useful practical materials, but there is demand for much more.

Until now, there have been no induction courses or programs for judges. HJPC, in conjunction with the JPTCs of the two entities, has been developing such courses for new judicial appointees. Starting in 2006, courses on court management, judicial ethics, and opinion writing, among others, will become part of a mandatory introductory curriculum for all future judges.

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

Conclusion	***Correlation: Positive***	***Trend: ↑***
Since 2003, judicial appointments have applied objective qualifications as criteria, such as professional knowledge and performance, academicals abilities, and previous career achievements, resulting in substantial improvements in both quality and independence of the appointees.		

Analysis/Background:

In 2004, the HJPC Law replaced and improved upon earlier criteria for the selection and appointment of judges. Under the new law, the HJPC has responsibility for appointment of all judges and prosecutors, except the Constitutional Courts, which are under the oversight of the respective entity and state-level legislatures. HJPC LAW art. 17(1). HJPC plays an advisory role with respect to nominating candidates for judges of the RS and FBiH Constitutional Courts. *Id.* art. 17(3).

The HJPC was established as an independent body with the mission to secure independent, impartial, and professional judiciary. *Id*. art. 3. It is made up of 15 members, 11 of whom are elected by the judiciary itself and chosen from among judges and prosecutors from all levels of judiciary (state level, entity level, cantonal/district level, and Brčko District); two attorneys elected by entity bar associations; and two members appointed separately by the Parliamentary Assembly and the Council of Ministers of BiH. *Id*. art. 4. The unified HJPC replaced the relevant state and entity-level Councils that were in existence since 2001. It was initially staffed by international and local staff, but is now largely indigenized.

Judicial candidates are selected based on education, experience, professionalism and reputation. They must be individuals possessing integrity, high moral standing, and demonstrated professional ability with the appropriate training and qualifications. *Id.* art 22. They also must hold the intellectual and physical aptitude to carry out judicial duties. *Id.* art. 21(1)(b).

Judicial candidates must apply to the HJPC for appointment following a public announcement of the vacancy. *Id.* art. 36; RULES OF PROCEDURE OF THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL arts. 20-21 (Nov. 30, 2004) [hereinafter HJPC RULES]. The application must be accompanied by supporting documents, including copies of university degree certificates and judicial examination certificate; a certificate of citizenship; a certificate that no criminal proceeding is pending and a declaration on whether the applicant has been subject to disciplinary measures or criminal

convictions; a declaration of non-affiliation with a political party; a declaration of compliance with property repossession laws; a writing sample; a medical certificate; and a confidential personal disclosure form. HJPC RULES art. 22.

The HJPC then empanels three-member nomination sub-councils or interview panels, to conduct a competitive examination, interview, and rank all applicants based upon their merit, fitness, and qualification. HJPC LAW arts. 37-38. The Law provides for a possibility of holding a competitive examination in the form of a written and/or an oral examination (*see id*. art. 39), although in practice this procedure is yet to be applied. Instead, candidates have to undergo an interview, which explores the applicant's qualifications in terms of educational background, professional experience, knowledge of the law, writing and communication skills, personality, analytical and problem solving skills, and organizational and technological skills. Applicants may also be instructed to draft a legal document or an opinion during an interview, which will be evaluated for the quality of legal analysis, writing, and the coherence of the argument. *Id.* art. 40; HJPC RULES art. 27. Following the interview, the nomination sub-councils or interview panels evaluate and rank all qualifying candidates and provide the list of ranked candidates to the full HJPC. HJPC LAW arts. 37(4), 38(5); HJPC RULES arts. 28-29.

The HJPC makes all final appointment decisions. HJPC LAW arts. 37(4), 38(5). A decision must be made individually on each and every candidate and must contain a justification in writing. *Id*. art. 44(1); HJPC RULES art. 31(2). Before making a final decision, the HJPC may request written opinions from current and/or former employers concerning the applicant's qualifications. HJPC LAW art. 41. In addition, in assessing whether the applicant is able to perform judicial functions, the HJPC takes into account the following criteria:

- professional knowledge, work experience, and performance;
- capacity through academic written works and other professional activities;
- professional ability based on previous career results, including participation in continuing training;
- work capability and capacity for analyzing legal problems;
- ability to perform impartially, conscientiously, diligently, decisively, and responsibly the duties of the judicial office;
- communication abilities;
- relations with colleagues, conduct out of office, integrity and reputation; and
- managerial experience and qualifications (for candidates applying for court president positions).

See id. art. 43.

All HJPC appointment decisions are announced publicly and are published in the Official Gazette, as well as posted on the HJPC's public notice board and its website. *Id*. arts. 44-45; HJPC RULES art. 31. Throughout the entire appointment procedure, each applicant has the right to review his/her application materials (including opinions received from employers), to present additional materials in his/her favor, to request and receive information regarding the application and appointment procedure (subject to confidentiality restrictions), and to submit comments about any matter affecting his/her application. HJPC LAW art. 42; HJPC RULES art. 30.

This new process is a substantial improvement over the prior systems of appointment and was used during the 2003-2004 reappointment of the entire BiH judiciary (*see* Factor 14 below for additional details), as well as for all subsequent appointments. Despite the relative newness of this system, there already is a strong consensus in the legal community that the process greatly reduced political influence in the selection of judges and has improved the quality of the judiciary overall. At the same time, there are dissenting views related to a few individual candidates. For instance, under the HJPC rules, candidates may not be members of a political party. HJPC RULES art. 22.1(g). However, the BiH Parliament recently appointed a high ranking member of

the ruling party to the BiH Constitutional Court, over a highly respected and prominent constitutional law professor with experience in bringing cases before the International Court of Justice. Although the HJPC rules do not apply to these appointments, which fall within the jurisdiction of the respective legislatures, public reaction has been very negative, but has not brought change. Nonetheless, most respondents felt that the new system of judicial appointments was working well.

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

Conclusion	***Correlation: Neutral***	***Trend: ↑***

All judges must take at least four days of mandatory continuing legal education annually. Course design is based in part on the stated needs of the judges, and while course offerings are not yet sufficient to cover the full range of training needs, they are expected to expand steadily over the next few years.

Analysis/Background:

In 2004, BiH established mandatory advanced professional training requirements for all judges. RS LAW ON THE CENTER FOR JUDICIAL AND PROSECUTORIAL TRAINING art. 16 (O.G.R.S. No. 49/02, No. 77/02); FBIH LAW ON THE CENTER FOR JUDICIAL AND PROSECUTORIAL TRAINING art. 16 (O.G. FBiH No. 24/02, 470/02, 59/02). Training is provided by the separate JPTCs of each entity, which operate under the supervision of and in coordination with the HJPC. Each JPTC is run by a Director and a Steering Board. Judges of the Brčko District may attend courses given by either JPTC, as can judges of each entity. It is expected that the two JPTCs will eventually be merged into a national system, which should not be difficult given the parallel structures, complementary courses, and some shared trainers. This proposed merger is widely regarded as a positive step.

The HJPC, in consultation with the Steering Boards of both JPTCs, determine the minimum amount of training each judge must receive annually to satisfy this professional obligation. HJPC LAW art. 17(8). In December 2004, HJPC adopted a decision providing that judges must undergo continuing legal education training for a minimum of four days per calendar year. The curricula are developed by each entity JPTC, under the supervision of the HJPC. *Id.* art. 17(7). The mandatory curriculum encompasses courses on substantive and procedural law, court administration, and advocacy skills. Judges may also receive additional IT skills training; however, this training is not considered mandatory and does not fall within the mandatory four-day curriculum. Judges wishing to receive this additional instruction must attend two additional working days of trainings. In addition, the JPTCs and the HJPC have developed a week-long management training course for court presidents in the first and second instance courts throughout BiH. Overall, the JPTCs have to ensure that training programs for judges are designed and implemented in the light of requirements for open-mindedness, competence, and impartiality that are inherent in the exercise of judicial duties.

Participation of judges in the various seminars, workshops, roundtables, and conferences is tracked in a special database designed for this purpose by the JPTCs.

The four-day mandatory course requirement has been well received by the judges and others in the legal profession. Many feel that more training is needed at present, given the enormity of

changes in laws and the judicial profession in the past decades, and judges are permitted to take more than the minimum, should their schedules permit. Many judges have taken extra courses. JPTC are currently developing courses in both substantive legal and administrative matters. The new mandatory continuing legal education requirements will also enable sitting judges to improve their basic knowledge, including their knowledge of the underlying commercial business practices giving rise to cases. This is important in light of the numerous practitioner complaints that judges lack understanding of the actual transactions in a case, not just the law governing those transactions.

Judges have also generally been satisfied with the quality and content of the courses. They note favorably an increasing use of practical, interactive teaching approaches with useful material, and a much-desired move away from both professors and professorial lecture styles. Most of the courses are taught by experienced practitioners who use case studies to address practical concerns. Professors are occasionally used to present legal theory.

Both JPTCs have received also received positive evaluations from other stakeholders and external reviewers. For instance, according to the Council of Europe's assessment, they "have significantly increased the number of training events they have organized each year since they began in 2003. The programs of training are well organized, well publicized and well presented. There is continuing development in each of the Centers ranging from the publication of newsletters to the development of online learning facilities." *See* COUNCIL OF EUROPE EXPERT MISSION, JUDICIAL AND PROSECUTORIAL TRAINING CENTERS FOR THE FEDERATION OF BOSNIA AND HERZEGOVINA AND REPUBLICA SRPSKA: REPORT ON ORGANIZATIONAL STRUCTURE, MANAGEMENT AND STAFF CAPACITY (March 2006).

Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

Conclusion	***Correlation: Neutral***	***Trend: ↑***
Ethnic balance in the courts has generally been achieved, with few finding ethnic issues to be a consideration any longer. Women are adequately represented in terms of aggregate numbers of judges, but there is a disproportionate male/female balance in the top positions and female/male balance at the entry level.		

Analysis/Background:

Under the most recent round of reforms, courts are required to establish the same ethnic ratio for each community as was found in the 1991 census, prior to the ethnic cleansing perpetrated during the war. *See, e.g.*, FBIH CONSTITUTION art. V.11(4). Under that census, the population of BiH was made up of Bosniaks (43%), Serbs (34%), Croats (16%), and other national minorities (7%).[2] The HJPC is charged with implementing the relevant constitutional provisions regulating the equal rights and representation of constituent peoples and others. HJPC LAW art 43(2).

Unlike in the 2001 JRI, the make-up of the courts no longer reflects the post-war ethnic make-up of the regions. For example, the RS, which was most heavily affected by ethnic cleansing, has achieved substantial progress in rebalancing the judiciary, with overall ethnic make-up

[2] However, as mentioned above in the BiH Background, the FBiH population is predominantly Bosniak and Croat, while the RS population is predominantly Serb.

approximating the 1991 census, even though the actual make-up of the population still reflects the dramatic mono-ethnic concentrations brought about by the war.

ETHNIC COMPOSITION OF COURTS AS OF FEBRUARY 2006

Court	Bosniak		Croat		Serb		Other		Total
	Total	%	Total	%	Total	%	Total	%	
Court of BiH	**9**	**45.0**	**4**	**20.0**	**6**	**30.0**	**1**	**5.0**	**20**
RS Courts	**53**	**24.8**	**19**	**8.9**	**132**	**61.7**	**10**	**4.7**	**214**
Supreme Court	4	26.7	2	13.3	9	60.0	n/a	n/a	15
District Courts	10	17.5	5	8.8	37	64.9	5	8.8	57
Basic Courts	39	27.5	12	8.4	86	60.6	5	3.5	142
FBiH Courts	**244**	**55.3**	**98**	**22.2**	**90**	**20.4**	**9**	**2.0**	**441**
Supreme Court	11	52.4	6	28.6	5	19.0	n/a	n/a	22
Cantonal Courts	64	55.6	27	23.5	23	20.0	1	0.9	115
Municipal Courts	169	55.6	65	21.4	62	20.4	8	2.6	304
Brčko District Courts	**8**	**36.4**	**5**	**22.7**	**9**	**40.9**	**n/a**	**n/a**	**22**
TOTAL	**314**	**45.1**	**126**	**18.1**	**237**	**34.0**	**20**	**2.9**	**697**

Source: HJPC.

For the most part, the legal community is satisfied with the current ethnic distribution within the courts, with two exceptions. First, many of the minority judges do not live in the same town as the court they are assigned to, but rather commute from their homes, which are often minority enclaves within the larger overall population. The expense of commuting is not paid for by the courts, so they must either lose money to serve in their courts, or move their families to a locale where they do not wish to live.[3] Second, many legal professionals, from both ethnic majorities and minorities, complained that the quota system required courts to keep vacancies open when qualified quota-beneficiaries could not be found, or to hire unqualified candidates merely to achieve the quotas. As to discrimination, however, there was unanimous concurrence that shared ethnicity between the judge and one of the parties would not lead to ethnic bias. If anything, parties have found that judges are extremely cautious in disputes involving only one party of the judges' ethnicity in order to avoid even the appearance of bias.

In a similar rule, the HJPC should also strive to achieve equality between women and men through appointments to all levels of the judiciary. HJPC LAW art. 43(2). While women still predominate at the lower levels of the judiciary (basic and municipal courts), their representation at the upper levels has improved significantly in the past several years. The RS Supreme Court continues to show a disproportionate male predominance, as do the State Courts, but the in the FBiH Supreme Court and the Brčko District, representation of men and women is equally balanced.

GENDER COMPOSITION OF COURTS AS OF FEBRUARY 2006, in %

Court	Overall Representation		Court Presidents	
	Men	Women	Men	Women
Court of BiH	65	35	0	100
RS Courts				
Supreme Court	73	27	100	0
District Courts	53	47	80	20
Basic Courts	37	63	63	37

[3] In general, the population of BiH maintains traditional values of community that may conflict with labor mobility, even if moving to a new location with an ethnic distribution they find acceptable.

FBiH Courts				
Supreme Court	48	52	100	0
Cantonal Courts	35	65	30	70
Municipal Courts	33	67	68	32
Brčko District Courts	50	50	100	0

Source: HJPC.

While gender bias may exist, legal professionals uniformly attribute any imbalances to societal norms, in which traditional values place greater responsibility on women for keeping the home and rearing children. There may also be a societal bias against women in positions of higher influence (despite 50 years of ideological egalitarianism under the former Yugoslavia). Upper level positions tend to either require more responsibility and longer hours, or are perceived as having those requirements, so that fewer women seek promotion, resulting in a disproportionately lower number of female candidates for advancement and a resultant shift in ratios. Female judges interviewed for this JRI, including those who had achieved higher prominence, did not feel that there was any gender bias in appointments or that the perceived societal bias was an issue in the judiciary. To the contrary, they expressed acceptance of the ratio shift based on choices of women, not on discrimination. On the other hand, numerous men have expressed an opinion that lower level judicial posts were better suited for women (because of perceived lower demands on time), suggesting that men seek the higher positions more aggressively.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

Conclusion	***Correlation: Negative***	***Trend: ↔***
Judicial organs have the power to determine the ultimate constitutionality of legislation, but the decisions are not effectively enforced. They do not have statutory authority to determine constitutionality of official acts.		

Analysis/Background:

BiH operates with the three constitutions resulting from the Dayton Agreement: one for each entity and one for the State of BiH. The Brčko District has no separate constitution, but is governed under a quasi-constitutional Brčko District Statute promulgated by the HR in December 1999.

Pursuant to the Constitution of BiH, the BiH Constitutional Court has exclusive jurisdiction to decide disputes arising under the BiH Constitution between the entities, between BiH and an entity or entities, or between institutions of BiH. *See* art. VI.3. Only a limited number of individuals and institutions can refer a case to the Court, including the Presidency, the Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, and one-fourth of either chamber of the entity legislatures. *Id.* art. VI.3(a). Although standing before the Court is limited, it is not considered restrictive, because the issues confronted tend to be inter-governmental, not fundamental rights of individuals. The Court also has appellate jurisdiction over issues under the BiH Constitution arising out of a judgment of any court in BiH, as well as jurisdiction over issues referred by any court concerning the compatibility of a relevant law with the BiH Constitution. *Id*. arts. VI.3(b)-(c). The BiH Constitutional Court has nine

members: three are international members selected by the President of the European Court of Human Rights, four are selected by the Federation House of Representatives, and two are selected by the RS Assembly. *Id.* art. VI.1(a).

The FBiH Constitutional Court has a jurisdictional mandate similar to that of the BiH Constitutional Court. The nine-member Court is composed of three judges from each of the three principle ethnic groups. FBIH CONSTITUTION art. IV.C.9. It may review compatibility of any law or regulation with the FBiH Constitution, and also has jurisdiction over disputes between cantons; between a canton and the FBiH; between a municipality and its canton or the FBiH; between the FBiH institutions; and over vital national interests at the entity level. *Id.* art. IV.C.10. Only selected officials may initiate a case before the Federation Constitutional Court. These include the President or Vice President of FBiH, the Prime Minister or the Deputy Prime Minister, or of one-third of the members of either house of the legislature). *Id.* art. IV.C.10(2). The Court may also decide constitutional questions referred by the FBiH Supreme Court and cantonal courts. *Id.* art. IV.C.10(3). As noted by one respondent, those with standing to challenge constitutionality are primarily the officials responsible for enacting the questionably constitutional statutes in the first place; thus, they are unlikely to challenge themselves. Individuals with constitutional claims must raise them through the regular court system; if the courts accept these claims, they must stay the proceedings and forward the claims to the FBiH Constitutional Court. *Id.* art. IV.C.11; *see also* FBiH LAW ON COURTS art. 30 (O.G. FBiH No. 38/2005).

The RS Constitutional Court is responsible for insuring that RS laws and other regulations comport with the RS Constitution, as well as insuring conformity of regulations with the law. Similarly to its FBiH counterpart, the Court also decides on jurisdictional conflicts between the different branches of government and between agencies of the RS and those of municipalities. RS CONSTITUTION art. 115. Pursuant to the RS Constitution, anyone can initiate proceedings before the Court, although only the President of the RS, the National Assembly, and the government can initiate proceedings without restriction. *See* art. 120. The Court itself may initiate proceedings to assess the constitutionality of laws. *Id.* The Court is composed of seven justices appointed by the RS National Assembly upon recommendation of the HJPC. *Id.* art. 116.

There is no constitutional court specifically for the Brčko District. Any court in the Brčko District may invalidate District laws deemed not in conformity with the Statute of the Brčko District. BRČKO DISTRICT LAW ON COURTS art. 4.

All three constitutional courts have the authority to review general acts of government (laws, decrees, and regulations applicable for all citizens) to determine their compatibility with the relevant constitution, and to review to review the constitutionality of official acts of administrative bodies by appeal from relevant lower courts, which have initial jurisdiction. That is, constitutionality of laws may be directly challenged in the constitutional courts, whereas the constitutionality of administrative acts is normally challenged indirectly through the administrative processes, which may eventually be appealed to the constitutional courts. If the claim arises from violation of human rights under Article II of the BiH Constitution, then it must be brought before the BiH Constitutional Court. Previously, there was a state-level Human Rights Chamber. Its mandate expired on December 31, 2003, and its functions were taken over by the BiH Constitutional Court.

Decisions of all Constitutional Courts are deemed final and universally binding. BIH CONSTITUTION art. VI.4; FBIH CONSTITUTION art. IV.C.12; RS CONSTITUTION art. 119. In the event that a constitutional court finds a law unconstitutional, such law ceases to be effective, unless it is revised by the responsible legislature in a manner specified by the Court. FBIH CONSTITUTION art. IV.C.12(b); RS CONSTITUTION art. 120. In general, legislatures have responded responsibly in such situations. Enforcement may be less certain when the constitutional challenge involves budgetary issues. For example, judges in the FBiH recently challenged the constitutionality of eliminating the reimbursement of travel costs for judges who must commute or relocate to achieve ethnic quotas in court composition, claiming that this violated constitutional prohibitions

against reduction in judicial benefits. Although the FBiH Constitutional Court found in their favor, they have been unable to enforce any change in payments, and the costs remain unreimbursed.

During 2005, the BiH Constitutional Court received 2,705 petitions, including 23 cases that addressed compatibility of legislation with the BiH Constitution and 2,682 appellate cases where it was requested to review lower court decisions that alleged violations by lower courts of the constitutional rights enumerated in Article II of the Constitution and the European Convention on Human Rights. The Court ruled in 7 cases related to constitutionality of legislation and 857 appellate cases. In addition, the Court issued 10 decisions related to constitutionality and 1,675 appellate decisions in cases that were pending from prior years. *See* BIH CONSTITUTIONAL COURT, STATISTICAL REPORT FOR 2005.

Legal professionals in the FBiH express dissatisfaction with the more restrictive approach of the FBiH Constitutional Court, which limits standing for constitutional claims. At the same time, for claims at the BiH and RS level, practitioners are generally satisfied with access to the Constitutional Courts and are increasingly satisfied with the quality of judgments of the BiH Constitutional Court, which is the most respected of the three.

Development of a reliable body of constitutional jurisprudence has been limited somewhat by the frequent changes to the various constitutions over the past 10 years. Political negotiations among the different governing bodies and the OHR have often resulted in constitutional amendments and even suspension of the constitutions by the OHR. While such conduct may be understandable given the difficult post-war context, it undermines the sense of permanence and certainty normally flowing from constitutional decisions. As legal, political and social stability increase in the future, so should the stability of constitutional law and practice.

Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

Conclusion	***Correlation: Neutral***	***Trend: ↔***
The judiciary has the power to review administrative acts and, theoretically, to compel the government to act where a legal duty to act exists. In practice, courts are frequently unable to enforce their decisions, and the cumbersome administrative procedures and appeals undermine judicial power.		

Analysis/Background:

Administrative acts are first subject to administrative proceedings within the government unit providing (or failing to provide) the services giving rise to a complaint. RS LAW ON ADMINISTRATIVE PROCEDURE art. 211 (O.G.R.S. No. 13/2002); FBIH LAW ON ADMINISTRATIVE PROCEDURE art. 221 (O.G. FBiH No. 2/98). For example, local governments (cantonal and municipal) have responsibility for issuance of building permits or other business licenses. If an application is denied, the applicant must first appeal to the issuer; if that appeal is unsuccessful, the applicant must then turn to the competent authority responsible for that unit, such as a ministry. If that further appeal is unsatisfactory, the applicant may then turn to the courts for redress.

While this approach is technically sound, in practice there is a serious problem of delays. Administrative appeals may take years and are not subject to *mandamus* actions to compel completion or otherwise bypass the administrative process. As a result, access to the courts is not necessarily meaningful if the claim arises from activity or inactivity of a recalcitrant

administrative body. The existing framework could be strengthened significantly by permitting courts to compel finalization of administrative decisions, so that adverse findings could then be subject to more timely appeal.

Once an administrative decision is issued, the courts are a useful avenue of appeal. Under the FBiH Law on Administrative Disputes, claims against final administrative decisions may be filed in court within 30 days of receipt of the decision. *See* art. 18 (O.G. FBiH No. 09/05). Challenges to the decisions of FBiH agencies are filed with the FBiH Supreme Court, which has a separate administrative law division; challenges to municipal and cantonal agency decisions generally are filed in the relevant cantonal court. *Id.* art. 6. Appeals against decisions of cantonal court in administrative matters are not permitted, although the FBiH Supreme Court may review such decisions in cases in which a question of Federation law exists, through a procedure of an extraordinary legal remedy. *Id.* arts. 40-41. The RS Law on Administrative Disputes is essentially the same as its Federation counterpart. The RS district courts have first instance jurisdiction over administrative claims. As in the FBiH, decision of RS district courts in administrative disputes are not subject to appeal. RS LAW ON ADMINISTRATIVE DISPUTES art. 34 (O.G.R.S. No. 109/05). The RS Supreme Court has final appellate jurisdiction, but only through a procedure of an extraordinary legal remedy. *Id*. art 35. *See also* RS LAW ON COURTS art. 27 (O.G.R.S. No. 111/04).

Reviewing courts may vacate an administrative ruling and remand it to the relevant agency or issue its own decision in the matter. FBIH LAW ON ADMINISTRATIVE DISPUTES art. 57; RS LAW ON ADMINISTRATIVE DISPUTES art. 50. If a court remands such a ruling, the relevant agency must act on the court's decision within 15 days in FBiH, or within 30 days in RS. If the agency fails to do so, or refuses to accept the legal opinion issued by the court, the aggrieved party may file an application with the administrative agency. If the agency still refuses to act within 7 days of receiving this application, the party may file another motion with the court, which will ask the agency to explain its failure to act. FBIH LAW ON ADMINISTRATIVE DISPUTES art. 57; RS LAW ON ADMINISTRATIVE DISPUTES art. 51. If the agency fails to respond to the court's request within seven days, the court may make a final decision in the matter and direct the relevant authority to execute it. FBIH LAW ON ADMINISTRATIVE DISPUTES art. 59; RS LAW ON ADMINISTRATIVE DISPUTES art. 52.

The State Court of BiH also has an administrative law division, with jurisdiction to review actions of state bodies and bodies of the Brčko District. LAW ON THE COURT OF BIH arts. 14, 19. For the Brčko District, claimants can commence claims in the Basic Court through a procedure similar to the one applied in the two entities. BRČKO DISTRICT LAW ON ADMINISTRATIVE DISPUTES art. 1 (O.G. Brčko No. 4/00). Appeals from the Brčko Basic Court are heard by the State Court. LAW ON THE COURT OF BIH art. 15.

Courts are facing a significant increase in the number of administrative claims, which in turn results in growing backlogs of these cases. For instance, administrative departments of cantonal/district courts received 9,741 first-instance cases in 2005, a 184% increase over the number of cases received in 2004 (3,420 cases). However, they resolved only about 58% of these cases. *See* HJPC ANNUAL REPORT 2005 at 102. As of June 30, 2005, the FBiH had 5,517 unresolved administrative cases, and 1,894 cases on appeal to the FBiH Supreme Court. In the RS, there were 3,718 unresolved disputes as of December 31, 2005.

Enforcement of decisions against administrative bodies continues to be difficult in many jurisdictions. Legal practitioners express general satisfaction with the quality of the administrative decisions issued by courts, but extreme frustration with enforcement. However, both the FBiH and RS have recently introduced new tools to compel compliance. Under the new Laws on Administrative Disputes, the courts are empowered to commence disciplinary proceedings against recalcitrant officials who fail to honor judicial decisions arising from appeal.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

Conclusion	***Correlation: Neutral***	***Trend: ↔***

The Constitutional Court of BiH exercises ultimate jurisdiction over civil rights and liberties. Lower courts expertise has improved marginally, but application of the law is inconsistent among courts and judges. Excessive delays continue to be a problem. Tri-partite discussions and training sessions among judges, prosecutors, and legal practitioners would have a significant impact on the practice and understanding of plea bargaining.

Analysis/Background:

Article II.3 of the BiH Constitution enumerates thirteen specific human rights and fundamental freedoms that all citizens have the right to enjoy. These include, *inter alia*: the right to life; the right not to be subjected to torture or to inhuman or degrading treatment or punishment; the right not to be held in slavery or servitude or to perform forced or compulsory labor; the rights to liberty and security of person; the right to a fair hearing in civil and criminal matters; the right to privacy of family life and correspondence; freedom of thought, conscience, and religion; freedom of expression; freedom of peaceful assembly and freedom of association with others; and other rights. In addition, the Constitution makes the ECHR, as well as 15 additional human rights treaties, directly applicable in BiH. *Id.* art. II.2 & Annex I. It also requires all courts to apply and conform to these rights and freedoms. *Id*. art. II.6. Any litigant alleging that his or her enumerated rights have been violated and who has exhausted his or her remedies through the regular court system (or demonstrated that such remedies are ineffective in his or her case) may bring a claim before the BiH Constitutional Court.

Until 2003, ultimate jurisdiction for claims arising from violation of civil rights and liberties rested with a specialized Human Rights Chamber of 14 members, of which eight were international judges appointed by the Council of Europe. The mandate of the Chamber ended on December 31, 2003, at which point the Constitutional Court of BiH took jurisdiction of all cases. For those cases filed on or before December 31, 2003, the Constitutional Court established a five-member Human Rights Commission, which continues to address the backlog of cases prior to 2004. The Constitutional Court hears all cases filed after December 31, 2003. *See* AGREEMENT PURSUANT TO ARTICLE XIV OF ANNEX 6 TO THE GENERAL FRAMEWORK AGREEMENT FOR PEACE IN BOSNIA AND HERZEGOVINA (Sept. 22-25, 2003). The most common cases have involved claims for return of frozen foreign currency accounts, war damages, pensions and property rights.

Merger of the Chamber into the Court initially raised concerns among human rights activists, who were generally satisfied with the performance of the Chamber and were reluctant to see these changes introduced. Performance of the Court, however, has allayed fears that the quality might suffer. One human rights lawyer had high praise for the quality and consistency of decisions, which were found to be consistent with the reasoning of the European Court of Human Rights on claims arising from violations of the ECHR.

BiH also has three human rights ombudsman institutions (one for each entity and for the national level), with three ombudsmen within each institution. They assist citizens in redressing human rights abuses through non-binding recommendations to appropriate authorities. They also may assist citizens with advice and support in filing claims. *See generally* LAW ON HUMAN RIGHTS OMBUDSMAN OF BIH (O.G. BiH No. 54/00); LAW ON OMBUDSMAN OF THE FBIH (O.G. FBiH No. 32/00); LAW ON OMBUDSMAN OF THE RS (O.G.R.S. No. 4/00).

Consistency in addressing the human rights issues by the courts remains a problem. Many judges do not have satisfactory understanding of human rights issues, and especially of human rights jurisprudence in connection with ECHR claims. In some cases, judges ignore ECHR claims and apply local law that has been superseded by the provisions of the ECHR. Training of judges in human rights issues has resulted in some progress, but improvements in decision making are still undermined by judicial inefficiency. Land claims, for example, often take five or more years to reach judgment.

Legislative changes adopted in January 2003 have introduced a radical new concept into judicial jurisdiction over civil liberties in criminal cases: plea bargaining. Prosecutors are now empowered to offer reduced sentences to accused criminals in exchange for admission of guilt and cooperation with criminal prosecutions – subject to the approval by a court. In order for a plea bargain to be accepted by a court, it must be made voluntarily, consciously, and with the understanding by the accused that he or she waives the right to trial or to appeal against the criminal sanction imposed as a result of the plea bargain. BIH CODE OF CRIMINAL PROCEDURE art. 231 (O.G. BiH No. 36/03, No. 26/04).

After two years of experience, opinions on the impact and appropriateness of this new mechanism vary widely. Prosecutors are generally quite satisfied with plea bargaining. They cite improvements in prosecutorial efficiency and note a high number of bargained cases. Indeed, during January-June 2005, plea agreements were concluded in 10.7% out of confirmed indictments in FBiH, in 15.5% in RS, and in approximately 28% out of confirmed indictments in the Brčko District. *See* OSCE MISSION TO BIH, PLEA AGREEMENTS IN BOSNIA AND HERZEGOVINA: PRACTICES BEFORE THE COURTS AND THEIR COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS STANDARDS at 9 (Feb. 2006) [hereinafter PLEA AGREEMENTS IN BIH]. On the other hand, prosecutors are dissatisfied with judicial practice, noting that there is confusion over the role of judges in plea bargaining cases. Practice between judges varies significantly, with some simply "rubber stamping" the bargain, others rejecting bargained agreements altogether, and still others simply renegotiating the agreements. Both prosecutors and judges agree that they are unsure of exactly what the judicial role should be and will need time and further training to work this out. In addition, a number of prosecutors noted that some judges have not grasped the incentives behind plea bargaining and undermine the mechanism by giving convicted suspects the same sentence that had been offered by the prosecutor in plea bargaining discussions. In other words, criminals have no reason to cut their potential losses by accepting a bargain that does not result in a better sentence than can be obtained through a full trial. Prosecutors would like to see judges apply harsher sentences to those who refuse a plea bargain and are convicted.

On the other hand, judges and lawyers, while generally supporting the plea bargain approach, had criticisms of prosecutorial practice. One defense attorney noted that prosecutors are interested only in bargaining over the ultimate sentence, not over the charges or admissions in the case, which also have repercussions for the accused. A number of respondents felt that bargains were resulting in excessively low sentences, and suggested that this arose in part from a tendency of prosecutors to exchange a bargain for the difficult investigative work often required to bring a conviction. Prosecutors noted that the law requires immediate sentencing (within three days) after a bargain is reached, undermining the leverage intended in using bargains of "small fish" to bring "big fish" to justice. As a result, if evidence obtained through a defendant's bargain does not result in substantial assistance to the prosecution against co-conspirators or other criminals, it may not be possible to adjust the sentence or otherwise continue the bargaining process. Other criticisms have focused on prosecutorial failure to advise defendants of their constitutional right to counsel, which results in obtaining plea agreements without benefit of counsel. In addition, there have been instances in which a bargain was completed before the prosecutor had even completed the indictment.

In short, all legal professionals agree that additional discussion, training and possibly legal reform are needed to ensure the best use of bargaining options. OSCE has recommended a number of actions by judges and prosecutors to address the problems noted and to improve practice. *See*

generally PLEA AGREEMENTS IN BIH at 2-4. There is no recommendation regarding legal counsel, however. According to respondents, much would be gained through tri-partite discussions and training sessions including judges, prosecutors and lawyers.

Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

Conclusion	***Correlation: Positive***	***Trend: ↔***
Judicial decisions may be reversed only through the judicial appellate process.		

Analysis/Background:

As a matter of law and practice, judicial decisions may be reversed only through the appellate process. Respondents knew of no mechanism by which a party could resort to extra-judicial means to obtain a reversal or other modification of a lower court ruling. Undue influence during the appellate process was cited by one practitioner as an occasional problem. Specifically, he hypothesized from experience that excessive delays upon appeal were due to political interference whereas uncharacteristically rapid treatment arose from bribery. Even assuming these unverifiable assertions contain some truth, there is still no direct recourse to non-judicial authority in the event of appeal.

Appellate practice has changed in the past two years. Recent changes to the Code of Civil Procedure require more effective treatment of appeals by appellate courts. In the past, appellate courts frequently reversed or vacated part or all of a decision without significant input or instruction to the lower court on how the law should have been applied, simply sending the case back for further work. This resulted in a form of judicial "ping-pong" between first instance and appellate courts, with frequent interim and final appeals resulting in delays. Today, appellate courts are expected to deal more effectively and decisively with the case by providing more explicit instructions to the lower courts. *See* RS CODE OF CIVIL PROCEDURE art. 227(5) (O.G.R.S. No. 58/03, No. 85/03, No. 74/05); FBIH CODE OF CIVIL PROCEDURE art. 227(5) (O.G. FBiH No. 53/03). The grounds for reversing and remanding first instance court decisions are limited to cases where a judgment was based on admission or express waiver, if a party was not given the opportunity to be heard through an unlawful act, such as improper service, and this affected the rendering of a proper and lawful judgment; a decision was rendered without conducting the main hearing; or if the judge rendering the decision was disqualified from hearing the case. In all other instances, appellate court must issue a final decision in the case. FBIH CODE OF CIVIL PROCEDURE art. 227(1); RS CODE OF CIVIL PROCEDURE art. 227(1). *See also* BIH CODE OF CRIMINAL PROCEDURE art. 310; FBIH CODE OF CRIMINAL PROCEDURE art. 325; RS CODE OF CRIMINAL PROCEDURE art. 316; BRČKO DISTRICT CODE OF CRIMINAL PROCEDURE art. 310.

Appellate practice under this new law and other substantive changes is still in its formative stages. Practitioners note that there is not yet sufficient consistency in rulings. This arises in part from the fact that BiH's civil law tradition does not recognize or require binding precedent. Even so, the system does recognize the doctrine of consistency, which, although not binding, does provide that decisions arising from similar facts and circumstances should have similar outcomes. Second, until recently, the inquisitorial system permitted introduction of new evidence on appeal; coupled with poor case record practices, this frequently resulted in reopening the case for additional argument on new facts at the appellate level, so that appeals did not have the effect of refining legal and judicial practice and providing predictability of outcomes. Today, it is no longer possible to propose new arguments at the appellate level, save for a few very narrow exceptions. RS CODE OF CIVIL PROCEDURE art. 207; FBIH CODE OF CIVIL PROCEDURE art. 207; *see also* BIH

CODE OF CRIMINAL PROCEDURE art. 295; FBIH CODE OF CRIMINAL PROCEDURE art. 310; RS CODE OF CRIMINAL PROCEDURE art. 301; BRČKO DISTRICT CODE OF CRIMINAL PROCEDURE art. 295 (4).

Practitioners also complain that too few cases are subject to reversal or significant instruction upon remand. One respondent noted that it is extraordinarily difficult to obtain reversals in a small town setting, suggesting that the lack of reversals generally was in part a result of a culture of collegiality, in which appellate judges simply did not reverse their colleagues except in egregious cases. Further study is needed to determine the quality of appellate practice and whether any interventions are justified to improve it. However, it should be noted in the judges' favor that until recently, most first instance cases were appealed due to alleged delays, normally based on the spurious and frivolous claims. Currently, 40-60% of all cases are appealed. One judge estimated that 90% of the appeals and challenges reviewed by his court were unfounded and intended only to delay enforcement. Nowadays, enforcement should no longer be delayed pending objection or appeal. RS LAW ON ENFORCEMENT PROCEDURE art. 12 (O.G.R.S. No. 59/03, No. 85/03); FBIH LAW ON ENFORCEMENT PROCEDURE art. 12 (O.G. FBiH No. 32/03, No. 52/03). If a party objects to enforcement, the court must decide the matter within 15 days and may stay the enforcement only if accepting the reasons for the objection. If the objection is rejected, the party may appeal to a higher court. In the meantime, enforcement continues. In practice, many enforcement division judges have not applied this law, in part because of a quota system in their performance evaluation that gave the same credit for certifying a case for appeal without enforcement – a simple task – as for enforcing it – a much more complicated task. Among judges who apply the new law, appeals are diminishing because they have no delay value.

The following table may be indicative of the general trends in the appellate practice of various courts throughout BiH.

RESULTS OF APPELLATE REVIEW OF JUDICIAL DECISIONS IN BiH

Court	Affirmed, %	Modified, %	Reversed, %
BiH Court	74.57	18.64	3.38
Entity Supreme Courts			
Civil departments	44.98	5.86	10.75
Criminal departments	55.77	11.43	14.63
Administrative departments	22.96	0.71	22.11
District/cantonal courts – administrative departments	63.12	8.68	11.64
Brčko District Appellate Court			
Civil department	69	12.06	14.04
Criminal department	65.91	27.33	4.82

Source: HJPC ANNUAL REPORT 2005 at 89, 95, 102, 142.

Overall, 65.33% of all decisions issued by municipal/basic courts in the FBiH and the RS were affirmed following review by higher instance courts, while 14.13% were modified and 17.61% were reversed. *See id*. at 116. In Brčko District, 77% of all Basic Court decisions were affirmed by the Appellate Court; 15.95% were modified, and 7% were reversed. *Id.* at 137.

It should also be noted that, pursuant to the BiH Constitution, the BiH Constitutional Court has a last-resort appellate jurisdiction over constitutional issues arising out of a judgment of any other court in BiH. *See* art. VI.3(b). Such review is available only if all effective remedies available under the law have been exhausted through ordinary appellate process or, exceptionally, if the appeal indicates as grave violation of the rights and fundamental freedoms guaranteed by the BiH Constitution or the international treaties applicable in BiH. *See generally* RULES OF PROCEDURE OF THE CONSTITUTIONAL COURT OF BIH art. 16.

Factor 9: Contempt/Subpoena/ Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion	***Correlation: Negative***	***Trend: ↔***
Judges have substantial contempt and subpoena powers, but these powers are still underutilized. While enforcement of judgments is, by law, carried out through enforcement divisions of the courts, in practice it is highly problematic.		

Analysis/Background:

Until recently, judges were ill-equipped to maintain discipline in the courtroom. Lawyers and parties regularly disregarded deadlines and orders to produce documents or witnesses with impunity, leading to endless delays. Two reforms – one legal and one structural – are beginning to change this situation.

The structural reform is the most significant. As a result of amendments to the Codes of Civil Procedure (2003 in the entities, 2004 at the state level), BiH has replaced its system of judge-dependent, material truth inquisition with an adversarial form of adjudication. *See* BIH CODE OF CIVIL PROCEDURE art. 12(1) (O.G. BiH No. 36/04); RS CODE OF CIVIL PROCEDURE art. 7(1); FBIH CODE OF CIVIL PROCEDURE art. 7(1). This fundamental reform has shifted the burden of production of evidence and legal argument from the judges to the parties. The former system of multiple hearings, in which the judge was responsible for seeking facts and evidence, led to endless delays and was inherently unsuitable for efficient adjudication because it rewarded parties for hiding evidence and presenting arguments piecemeal. The new system requires more complete pleadings, shifts the evidentiary burden onto the parties, and provides for only one preliminary hearing prior to the main hearing, which has the characteristics of a single-event trial. BIH CODE OF CIVIL PROCEDURE art. 29; RS CODE OF CIVIL PROCEDURE art. 62(2); FBIH CODE OF CIVIL PROCEDURE art. 62(2). Most importantly, the judge may dismiss evidence and pleadings that do not meet deadlines and may enter default judgments against parties. BIH CODE OF CIVIL PROCEDURE art. 149; RS CODE OF CIVIL PROCEDURE art. 182; FBIH CODE OF CIVIL PROCEDURE art. 182.

In addition, judges have been given legal authority to apply monetary sanctions for delays and other non-compliance with judicial orders. BIH CODE OF CIVIL PROCEDURE art. 343; RS CODE OF CIVIL PROCEDURE art. 406; FBIH CODE OF CIVIL PROCEDURE art. 406. Specifically, the courts are authorized to impose a fine in the amount of BH KM 100-1,000 (USD 61-610)[4] on the party or his/her legal representative for abusing the rights available to them under the law. The courts do not have detention powers, however, and therefore cannot order the jailing of recalcitrant parties, except for witnesses, who can be imprisoned for up to 15 days to compel testimony. RS CODE OF CIVIL PROCEDURE art. 410; FBIH CODE OF CIVIL PROCEDURE art. 410.

Individuals present in the courtroom during the trial must obey orders of the judge or the presiding judge to maintain order. Those who disrupt the order in the courtroom will receive a warning and if the warning is ineffective, the judge may order that person removed from the courtroom and be fined in the amount of up to BH KM 10,000 (USD 6,100). BIH CODE OF CRIMINAL PROCEDURE arts. 242(1), 242(3). The judge may also exclude a person from the courtroom in order to protect the right of the accused to a fair and public trial or to maintain the dignity of trial.

[4] In this report, Bosnian Marks (BiH KM) are converted to United States dollars (USD) at the approximate rate of conversion at the time when the report was drafted (USD 1 = BiH KM 1.64).

There are provisions for the court police in BiH to provide assistance to the courts throughout the country in collecting information, enforcing court orders on bringing in the witnesses and the accused persons, maintaining courtroom order upon instructions from the court, and enforcing other court orders. LAW ON COURT POLICE OF BOSNIA AND HERZEGOVINA art. 5 (O.G. BiH No. 21/2003); RS LAW ON COURT POLICE art. 7 (O.G.R.S. No. 49/02); FBIH LAW ON COURT POLICE art. 7 (O.G. FBiH No. 19/96, No. 37/04).

In practice, the structural reforms are more important than the increased powers of issuing fines and warnings. Judges have generally been reluctant to issue fines for two reasons. First, there are no guidelines for calculating the amount of fines, and judges, already staggering under excessive caseloads in many courts, do not wish to spend the time doing the calculations. Second, the imposition of a fine usually leads to an appeal or a complaint against the judge, leading to additional work and delays.

Judges and lawyers uniformly agree that the threat of default judgment and disallowance of evidence and pleadings is a much greater threat. Under the new system, the lawyers have become responsible for meeting deadlines, which exposes them to malpractice claims from their clients, as well as potential sanctions from the bar, although the latter are theoretical at this point as the bar has not tended to discipline its members. Consequently, there has been substantial improvement in case conduct for judges who apply the new rules.

Inconsistent practice among judges continues to limit the effectiveness of the reforms. There is a residual sense of personal responsibility for the outcome of the case from the previous system, in which the judge was responsible for determining whether enough evidence or argument had been provided. As a result, many judges are hesitant to apply the law according to its terms. As one judge stated, "How can I expect the parties to be on time when sometimes I have problems meeting deadlines?" On the other hand, where court presidents apply and require their judges to apply the new laws, courts are significantly improving performance. It is likely to take several years to accomplish the necessary shift in mentality and practice, at which point subpoena and contempt powers should become more effective in refining the system within the more fundamental changes taking place today.

Enforcement problems continue to plague the courts, particularly for final judgments. Enforcement of judgments requires a separate action through the enforcement division of the courts. *See generally* RS AND FBIH LAWS ON ENFORCEMENT PROCEDURE. According to these laws, enforcement should be carried out even if there is an appeal from the party whose property is the object of enforcement. RS LAW ON ENFORCEMENT PROCEDURE art. 12(5); FBIH LAW ON ENFORCEMENT PROCEDURE art. 12(5). If a judgment debtor fails to comply with repeated court orders in the course of enforcement proceedings the court may impose a fine of BH KM 100-5,000 (USD 3,050) on natural persons, or BH KM 1,000-100,000 (USD 610-61,000) on legal persons. Criteria that guide the amount of fine to be imposed include the debtor's financial capacity, his/her conduct, and other relevant circumstances. RS LAW ON ENFORCEMENT PROCEDURE art. 17; FBIH LAW ON ENFORCEMENT PROCEDURE art. 17.

In practice, most judges continue to stay enforcement of judgments upon challenge or appeal, even if the claims are clearly frivolous. This practice leads to long delays in the enforcement procedures and a growing backlog of enforcement cases. Enforcement cases constitute about 63% of the overall case backlogs in the BiH courts, and the judiciary is able to resolve only about half of the inflow of enforcement actions. The HJPC estimated that it would take the municipal/basic courts five years to dispose of the current enforcement case backlog, even if no new claims were filed. *See* HJPC ANNUAL REPORT 2005 at 3, 113-114. On the other hand, those judges who refuse to stay enforcement are finding that fewer parties are filing appeals.

When enforcement does move forward, officers (bailiffs) are ill-equipped to carry out their duties. They must use their own vehicles to seize property and then generally have no place to warehouse seized movables, so attachment is effected through marking goods and leaving them

on the premises of the judgment debtors. The Sarajevo Municipal Court, in concert with the Bankers Association of BiH, is establishing an auction center for seized goods that will combine warehouse space with scheduled, professional auctions and delegate transportation of seized goods to the judgment plaintiff. It is too early to determine whether this will be effective in improving enforcement practices.

A related problem is the fact that the Laws on Enforcement Procedure allow initiating enforcement actions not only on the basis of an enforceable document (e.g., a final court order), but also on the basis of "authentic documents" (e.g., unpaid utility bills or records of utilities companies). As a result, several courts in larger cities are suffering from a deluge of small claims from utilities companies that have no dispute and therefore do not belong in the courts. These cases make up the majority of enforcement cases in Bosnian courts. Sarajevo Municipal Court currently has a backlog of 700,000 unresolved utilities claims that have overwhelmed the enforcement division of the court. Most of these claims are less than USD 100 in value, and many are less than USD 20. Various proposals are under consideration for removing these claims from the courts.

III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

Conclusion	***Correlation: Negative***	***Trend: ↔***
The HJPC and several Ministries of Justice have divided responsibilities for budgetary matters, with courts playing a limited role in this process. Once funds are allocated, the judiciary has little flexibility in how such funds are used and may be subject to funding cut-offs.		

Analysis/Background:

Despite the existing legal provisions, as a practical matter the judiciary has little satisfactory input into budget decisions. The HJPC performs an advisory role for all courts to assist with preparation and submission of budgets to the appropriate Ministry of Justice. HJPC LAW art. 17(14)-(18). The Ministry of Justice may then amend the budget request before providing it to the appropriate Ministry of Finance. In practice, courts may submit their budget requests to the HJPC or directly to the appropriate ministry. There are 14 "appropriate ministries" involved in the system, and 14 separate budgets for the judiciary. The Court of BiH is funded through the State budget and thus submits budget requests to the State Ministry of Justice. In the RS and Brčko District, courts are funded through the RS and Brčko budgets, respectively. In the FBiH, the Supreme Court is funded through the FBiH budget, but the ten cantonal courts are each funded separately through their relevant cantonal governments. FBIH CONSTITUTION art. VI.7(2). In each case, relevant legislature may or may not accept the proposed funding levels. In fact, the total budgets proposed by the relevant Ministries of Justice or adopted by the legislatures cover only 90% of the budget proposals submitted by the HJPC, and this reduction may reach as much as 26% (for the RS basic courts) as compared to the HJPC proposals. *See* HJPC ANNUAL REPORT 2005 at 49. Judges complain that the HJPC, the MOJ, and the Parliament each have a tendency to reduce the requests without explanation.

In practice, uncertainty in the budgeting process leads to frustration and inefficiency. Court presidents, who are responsible for presenting the budget needs of their courts, complain that

there is little, if any, feedback on budget reduction decisions. If they present an accurate budget, it will be reduced without explanation, thus encouraging inflated requests in the hopes of obtaining what they believe is actually needed. Officials reviewing the budgets come to see the requests as bloated, and therefore do not respect them. Poor communication and distrust between the various actors involved hamper effective budgeting and allocation of funds. The HJPC has an increasing role in changing and improving the budget process and is charged with "advocating for adequate and continuous funding of courts" in BiH. HJPC LAW art. 17(18). However, it is not yet seen as an advocate by the court presidents who feel that the HJPC reduces their budgets prior to submitting requests to the MOJ or Ministry of Finance, which further reduce the budget. It should also be noted that the HJPC has consistently recommended replacing the existing fragmented judicial financing system with a single source of funding for the entire judiciary. *See, e.g.*, HJPC ANNUAL REPORT 2005 at 1-2.

JUDICIAL SYSTEM BUDGET IN BiH, 2003-2006

Court Level	2003, BiH KM	2004		2005		2006	
		BiH KM	USD	BiH KM	USD	BiH KM	USD
Court of BiH	2,989,346	3,724,640	2,271,122	3,912,166	2,385,467	5,000,000	3,048,780
RS Courts	24,260,509	28,786,940	17,553,012	28,196,347	17,192,895	25,951,268	15,823,944
Supreme	989,600	1,556,490	949,079	2,250,537	1,372,279	2,119,388	1,292,310
District	4,607,114	5,450,670	3,323,579	5,781,713	3,525,435	6,580,896	4,012,741
Basic	18,663,795	21,779,780	13,280,354	20,164,097	12,295,181	17,250,984	10,518,893
FBiH Courts	64,223,582	76,818,996	34,766,015	70,189,385	42,798,405	68,683,382	41,880,111
Supreme	3,822,970	4,445,070	2,710,409	5,547,069	3,382,359	5,199,698	3,170,548
Cantonal	18,032,420	19,802,732	12,074,83	18,826,584	11,479,624	18,049,142	11,005,574
Municipal	42,368,192	52,571,194	32,055,606	45,815,732	27,936,422	45,434,542	27,703,989
Brčko Courts	3,332,457	4,318,715	2,633,363	3,691,096	2,250,668	3,766,664	2,296,746
TOTAL BiH	**94,805,894**	**113,649,291**	**57,223,512**	**105,988,994**	**64,627,435**	**103,401,314**	**63,049,581**

Source: HJPC ANNUAL REPORT 2005 at 48-49.

The funding allocated to the courts is typically insufficient to cover the basic expenses of the courts. For instance, the HJPC reports receiving frequent complaints from court presidents about lack of funds for such expenses as telephone service, postage, and payment for utilities. It also points out that almost no funds are allocated for capital expenditures. *See id.* at 7. Because of this, courts often have to carry over the expenses incurred in one year to the next year's budgets.

Insufficient budgets for the courts are caused by several problems. First, there are political issues regarding independence of the courts, further noted below, in which executives seek to exert undue influence over the courts through funding decisions and even disbursement of budgeted funds. Second, courts are not perceived as a self-sufficient revenue-generating institution because fee structure and fee collection practices do not generate the revenues they should, resulting in a budgetary drain in some jurisdictions. In BiH, plaintiffs are not required to pay their court fees prior to commencing a law suit, but may wait until judgment and then pay if they are successful, subject to any request for reduction of fees. Fees are based on the value of the claim, not the services rendered. *See* LAW ON TAXES BEFORE THE COURT OF BIH art. 22 (O.G. BiH No. 39/03); RS LAW ON COURT TAXES art. 22(1) (O.G.R.S. No. 18/99); LAW ON COURT TAXES IN BRČKO DISTRICT art. 21 (O.G. Brčko No. 5/01, No. 12/02, No. 23/02). In enforcement cases, plaintiffs are technically required to pay the fees prior to commencement of the procedure (*see* RS LAW ON COURT TAXES art. 30; LAW ON COURT TAXES IN BRČKO DISTRICT art. 30), but in practice this is not uniformly enforced. High volume plaintiffs, such as utility companies, therefore treat the courts as a contingency fee system. In Sarajevo Municipal Court, simply requiring pre-

payment of fees for the 700,000 backlogged cases would generate millions of dollars worth of revenues.

Unfortunately, the "contingency" system is based on a misguided understanding of European indigency rules. Various BiH legal authorities have expressed a belief that the ECHR forbids mandatory pre-payment because it might result in denial of justice to indigents who cannot afford it. Thus they argue that because fairness requires for all parties to be treated equally, no one can be required to pay in advance. To the contrary, EU countries have established indigency exceptions to the mandatory pre-payment requirements and do not suffer from a plague of unpaid fees. In practice, this mistaken belief has led to a system that permits all plaintiffs to move forward even if their fees are unpaid. Some courts have authority to apply late payment penalties (*see* LAW ON TAXES BEFORE THE COURT OF BIH art. 15; RS LAW ON COURT TAXES art. 40; FBIH LAW ON COURT TAXES art. 15; LAW ON COURT TAXES IN BRČKO DISTRICT art. 40), and all can commence enforcement actions against parties for payment of overdue fees, but they cannot suspend the litigation pending payment. As a result, a significant percentage of revenues are not collected on a timely basis, if at all. A revision of the fee structure (based on cost of services, not value) and establishment of mandatory pre-payments subject to applications for indigency would do much to establish respect for the judiciary as a source of revenues that should be better supported through budgetary commitments.

Once allocated, budgetary resources are still subject to constraints. Court presidents are given no discretion to move funds between line items, so that if needs change during the course of the year, they are locked into the spending limits of initial budget, even if they have extra resources. Instead, they may submit a written request for reallocation of funds between different line items to the competent Ministry of Justice, with copies to the competent Ministry of Finance and the HJPC; however, no line item may be decreased by more than 10% of the approved budgetary allocation. Court presidents uniformly complain that they are unable to manage the budgets according to their realistic needs.

Incremental funding presents another problem. A number of respondents reported instances when judicial salaries had been withheld by the relevant Ministry of Justice in order to pressure or punish judges in politically sensitive cases. Such instances of undue influence were possible because the courts did not have control of the funds allocated to them. For example, in the Una Sana Canton, judges in Bihac did not receive salaries for three months in an attempt by the Cantonal government to influence a politically sensitive case.

Payment for *ex oficio* representation (similar to *pro bono* representation) presents another budgetary problem. Attorneys who represent criminal defendants in *ex oficio* cases are entitled to payment for their services (based on the applicable fee schedule) from the court budget, which traditionally fail to include sufficient allocations to cover these expenses. Attorneys submit a request for payment at the conclusion of the case, and then must frequently wait six months to one year before receiving payment. Even if the budgeted funds are set forth in the court budget, they are generally insufficient to cover actual costs. Some Ministries of Justice do not include *ex oficio* fees in their budget requests. The resultant delays have led to pressure from bar associations for the courts to pay from other line items or sources. The bar has even conducted "strikes" in some court districts, refusing to take an *ex oficio* case without pre-payment of fees.

In summary, the budgetary system continues to represent a weakness in the efficiency, effectiveness and independence of the courts.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.

Conclusion	***Correlation: Positive***	***Trend: ↔***
Effective January 1, 2006, judicial salaries structure has been streamlined and salaries equalized among the entities. Salaries are presently at the levels that are sufficient to attract, retain and support qualified judges without having to resort to other sources of income.		

Analysis/Background:

In December 2004, judicial salaries were raised approximately 40% through the intervention of the OHR. The increases were based on multiples of minimum average salaries. DECISION ENACTING THE LAW ON AMENDMENTS TO THE LAW ON JUDICIAL AND PROSECUTORIAL SERVICE IN THE FEDERATION OF BIH (Dec. 17, 2004); DECISION ENACTING THE LAW ON AMENDMENTS TO THE LAW ON COURTS AND JUDICIAL SERVICE IN THE REPUBLIKA SRPSKA (Dec. 17, 2004). Although increased, the salaries were also frozen at net average salary levels as of December 2003 in FBiH and as of November 2004 in RS. As a result, discrepancies were exacerbated between the RS and the FBiH, which have different pay levels, resulting in the FBiH judicial salaries approximately 20% higher than those in the RS. Base pay was determined by years of professional experience (including non-judicial professional experience in the practice of law, for example) and subject to annual (in FBiH) or monthly (in RS) pay increases. At the time of interviews for this JRI, judges unanimously agreed that the levels were sufficient to support a reasonable lifestyle and to attract qualified professionals. Court presidents noted that higher salaries enabled them to demand more of the judges in their courts, particularly with regard to more rigorous working hours.

Despite the satisfaction of judges, there have been problems with the existing salary structure. First, disparities between the FBiH and the RS were a cause of contention, as already noted. Second, the salary levels in both entities were substantially higher than that of other government employees,[5] giving rise to resentments and a desire among many non-judicial government employees to bring judicial salaries back down to their level. BiH shares a cultural characteristic common throughout Eastern and Southern Europe of "downward equality" – rather than "keep up with the Joneses" by competing to rise to the same level as one whose situation is improved beyond the average; there is a preference to "keeping the Joneses down" at that same level as all others. As a consequence, the HJPC recommended adjustments and freezes in salaries, which have been adopted. Effective January 1, 2006, all judicial salaries are set and frozen (as shown in the chart below) until the average government salary reaches BiH KM 800 per month (approximately USD 490). *See* LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS AT THE LEVEL OF BOSNIA AND HERZEGOVINA art. 6; LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS IN THE FEDERATION OF BOSNIA AND HERZEGOVINA art. 6; LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS IN THE REPUBLIKA SRPSKA art. 6; LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS IN THE BRČKO DISTRICT art. 5. Currently, the average government salaries in the RS and the FBiH, respectively, are approximately BiH KM 460 per month (USD 280) and BiH KM 550 per month (USD 335). It is unclear how long it will take these levels to rise to BiH KM 800 per month, but at that point, judicial salaries will begin to rise again, at the same percentage as average government salaries.

[5] As of December 2004, the average net salaries in the FBiH amounted to BiH KM 530 (USD 323), while those in the RS amounted to BiH KM 385 (USD 235). *See* REFORM OF JUDICIAL SALARIES IN BIH at 9-10.

BASIC MONTHLY JUDICIAL SALARIES IN BiH

Entity/Court Level	Basic Salary Prior to Reform		Basic Salary as of Jan. 1, 2006	
	BiH KM	USD equivalent	BiH KM	USD equivalent
BiH National				
Const. Court of BiH – Judges	5,646	3,443	4,200	2,561
Const. Court of BiH – President	n/a	n/a	4,800	2,927
Court of BiH – Judges	4,036	2,461	3,800	2,317
Court of BiH – Dept. Heads	n/a	n/a	4,000	2,439
Court of BiH – President	4,843	2,953	4,400	2,683
RS and FBiH Level				
Basic Courts / Municipal Courts				
Judges	2,620 / 2,798	1,598 / 1,706	2,400	1,463
Dept. Heads	n/a	n/a	2,600	1,585
Presidents				
< 30 judges	3,144 / 3,078	1,917 / 1,877	2,800	1,707
30-59 judges			3,200	1,951
> 60 judges			3,600	2,195
District Courts / Cantonal Courts				
Judges	3,143 / 3,626	1,916 / 2,211	3,000	1,829
Dept. Heads	n/a	n/a	3,200	1,951
Presidents	3,772 / 4,351	2,300 / 2,653	3,400	2,073
Constitutional and Supreme Courts				
Judges	3,667 / 4,679	2,236 / 2,853	3,800	2,317
Dept. Heads	n/a	n/a	4,000	2,439
Presidents	4,400 / 5,615	2,683 / 3,424	4,400	2,683
Brčko District				
Basic Court				
Judges	3,312	2,020	2,980	1,817
President	3,588	2,188	3,200	1,951
Appellate Court				
Judges	3,542	2,160	3,200	1,951
President	3,910	2,384	3,500	2,134

Source: LAWS ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS, *supra*; REFORM OF JUDICIAL SALARIES IN BOSNIA AND HERZEGOVINA: REPORT OF THE CHAIRMAN OF THE WORKING GROUP TASKED WITH PROPOSING AMENDMENTS TO THE LAWS ON JUDICIAL SALARIES AT BIH AND ENTITY LEVEL AND IN BRČKO DISTRICT, at 7-11 (June 2005) [hereinafter REFORM OF JUDICIAL SALARIES IN BIH].

Constitutional provisions contain protections against diminishing judicial salaries, with the exception of reduction in salaries authorized as a result of disciplinary proceedings. *See, e.g.*, BiH Constitution art. IX.2; FBIH CONSTITUTION arts. IV.C.7(1), V.11(3), VI.7(4); RS Constitution art. 127. Nonetheless, as can be seen from the Table above, while the salary changes have equalized salaries substantially, they have also reduced some, which raises constitutional issues and potential constitutional challenges. Overall, the new salaries represent a reduction of 8.8% at the first instance and of 0.4% at the highest level in the RS courts. For the FBiH courts, the new salaries represent a reduction of 3.5% and of 12.2%, respectively. *See* REFORM OF JUDICIAL SALARIES IN BIH at 30.

In addition to the basic monthly salaries, judges receive a supplement equivalent to 0.5% for each full year of work experience, up to a maximum of 40 years. Further, judges are entitled to health insurance, sick leave, and disability insurance. LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS AT THE LEVEL OF BOSNIA AND HERZEGOVINA arts. 5, 12-13; LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS IN THE FEDERATION OF BOSNIA AND HERZEGOVINA arts. 5, 12-13; LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS IN THE REPUBLIKA SRPSKA arts. 5, 12-13; LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL IN THE BRČKO DISTRICT arts. 4, 11-12. It should be noted that the new judicial salaries legislation has eliminated numerous other supplemental benefits provided to judges under the entity legislation.

Reimbursement for travel expenses, eliminated in 2004, continue to be disallowed under the recent salary and benefit changes. Judges who incur significant expenses in fulfilling ethnic balance requirements by commuting to courts in a which they are part of the ethnic minority must incur those costs personally. Initially, such costs were covered to encourage and ensure better balance in the ethnic composition of the courts where relocation was unfeasible. The judges associations have taken up this matter on behalf of their judges, challenging the constitutionality of eliminating the reimbursements.

Although judicial salaries have been settled for the foreseeable future, judges make significantly more than their staff. *See* Factor 26 below for further details. Numerous respondents noted that this salary disparity has led to resentment and lack of motivation among the clerks and other court officers, who sometimes openly express discontent. Petty corruption at the staff level has been cited as a problem arising in part from low salaries and a sense of entitlement because of the salary disparity.

Factor 12: Judicial Buildings

Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

Conclusion	***Correlation: Negative***	***Trend: ↔***
In general, judicial buildings are conveniently located and easy to find, and while their overall quality and condition are still inadequate for appropriate dispensation of justice, improvements are currently being made.		

Analysis/Background:

The substantial majority of judicial buildings are conveniently located and easy to find. However, the poor conditions noted in the 2001 JRI are still prevalent, though diminishing. Overall, judicial buildings do not provide a respectable environment for the administration of justice. Most court buildings are in a state of disrepair. The major problem is the lack of space. Because of a scarcity of courtrooms, most judges hold hearings in their cramped offices. At the lower court levels, it is not uncommon for several judges to share a single office.

Significant investments have been made to renovate and modernize the four model court buildings in connection with the USAID pilot projects implemented by the Judicial Sector Development Project [hereinafter JSDP] in Banja Luka, Konjic, Mostar and Zenica. Likewise, international funding has resulted in substantial improvements for the Sarajevo Municipal and Cantonal Courts (housed together), while Brčko boasts new facilities. In December 2005, a U.S.-funded team of Bosnian and Italian architects analyzed the need for reallocation of space and renovation or expansion of facilities and completed a six-month survey of the 55 additional courts

and 7 court branches. They found that approximately one quarter of the facilities were substantially below acceptable standards, and another 40% needed significant improvements. On a scale of 0 to 5, with 0 the worst and 5 the best, 17 facilities rated 2 or below, and 27 rated 3. Overall costs to repair or reform were estimated at approximately BiH KM 23.5 million (roughly USD 15.5 million). *See generally* ALISEI (ASSOCIATION FOR INTERNATIONAL COOPERATION AND HUMANITARIAN AID), TECHNICAL DOCUMENTATION FOR RECONSTRUCTION WORKS ON THE COURTS OF BOSNIA AND HERZEGOVINA WITH THE GOAL TO CREATE CONDITIONS FOR BETTER FUNCTIONING OF THE COURTS (June-Dec. 2005).

The HJPC has used the plan to program priority work, and has targeted 10 facilities (5 in each entity) for repairs estimated at BiH KM 10.4 million (approximately USD 6.9 million), if funding is available. The HJPC is seeking financial contributions from international donors to meet these costs.

Although there has been slow progress in improving a small number of courts, the overall situation has grown worse because of several reforms. First, the move to an adversarial system that prohibits *ex parte* communication with the judges means that the small offices are even less adequate than before, when judges could hold meetings with only one party. Many courthouses do not have sufficient space to organize and confine public access, so that parties or attorneys can wander freely throughout, generally for the purpose of attempting to have *ex parte* meetings. Few courthouses have rooms where lawyers and clients can meet confidentially in preparation for or support of a hearing. Although the Sarajevo Municipal Court reserved a café facility exclusively for this purpose, attorney-client conferences in most courthouses must be held on benches in the hallway.

Second, the minor offense courts have been merged into the municipal court system, with the requirement that the facilities be combined. This is less problematic in some cases, because the recent separation of judicial and prosecutorial offices has resulted in the departure of prosecutors from the court buildings, freeing some space but normally not enough. On the whole, however, this realignment is putting even greater pressure on overburdened, inadequate facilities.

Third, the separation of judges and prosecutors requires that new space be found for prosecutors' offices. Following the introduction of an adversarial system of criminal justice, it was considered that housing judges and prosecutors in the same building (as was the general practice) violated the rules of judicial impartiality and independence. Consequently, it was decided that not only legal separation, but also physical separation of the judicial and prosecutorial office premises was necessary. The added expense of outfitting new space and reconfiguring old space is not sufficiently funded under current budgets, leading to delays in the de facto separation in many jurisdictions. An additional assessment of prosecutors' offices is planned.

Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

Conclusion	***Correlation: Negative***	***Trend: ↔***
Most courthouses generally have inadequate security to offer sufficient protection to judges from harassment or assault.		

Analysis/Background:

Security problems can be divided into issues of general building security and protection of judges. The responsibility for providing security to court buildings and personal security to judges and other court staff rests with the court police. *See* LAW ON COURT POLICE OF BOSNIA AND HERZEGOVINA art. 5; RS LAW ON COURT POLICE art. 7; FBIH LAW ON COURT POLICE art. 7.

Few court buildings outside of Sarajevo have adequate security. Metal detectors have been provided to several courthouses, but not all have been connected. One courthouse in the RS simply has a sign prohibiting firearms, tank-top shirts, sandals, and food. Security officers normally work only until 5:00 p.m., and there is no security arrangements thereafter in many courthouses should staff need to work late. Even in Sarajevo, judges at the Municipal Court have expressed concern that security will diminish once court police officers assigned to the prosecutor's office are relocated under the separation of judicial and prosecutorial services. The presence of these additional officers in the currently shared space is perceived as a substantial benefit.

Likewise, judges expressed concern over inadequacy of protection for them in general. Several noted that security may be increased during high profile criminal trials or war crimes trials, but that the protection does not normally extend to their homes and families, and ceases once the trial is over. One prosecutor who has brought criminal corruption charges against public officials and will soon be prosecuting war crimes expressed serious concern over the safety of his family, for whom there is no protection available.

IV. Structural Safeguards

Factor 14: Guaranteed tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

Conclusion	***Correlation: Positive***	***Trend: ↔***
All judges are appointed for life tenure until the mandatory retirement age of 70.		

Analysis/Background:

Under the 2002 reforms, all judges are guaranteed life tenure through the age of 70. This applies at all levels of the judiciary and for all jurisdictions – State, FBiH, RS, and Brčko District. HJPC LAW arts. 90, 23(1), 25(1), 26(1), 27(1), 28(1). *See also* BIH CONSTITUTION art. VI.1(c); FBIH CONSTITUTION arts. IV.C.6(3)-(4), V.11(3), VI.7(4); RS CONSTITUTION art. 127; BRČKO DISTRICT STATUTE art. 66(1).

Upon retirement, all judges are entitled to a compensation in the amount of one basic monthly salary, as described in Factor 11 above. LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS AT THE LEVEL OF BOSNIA AND HERZEGOVINA art. 11; LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS IN THE FEDERATION OF BOSNIA AND HERZEGOVINA art. 11; LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS IN THE REPUBLIKA SRPSKA art. 11; LAW ON SALARIES AND OTHER COMPENSATIONS IN JUDICIAL AND PROSECUTORIAL INSTITUTIONS IN THE BRČKO DISTRICT art. 10. In addition, retired judges may be appointed to reserve judge positions until they reach the age of 72. HJPC LAW art. 33.

Unfortunately, recent practices have left the reliability of life tenure in doubt. As stated previously, one of the recent major judicial reform initiatives involved the process of reappointment of all judges throughout BiH. In the course of this process, which was initiated in 2003 and largely completed in 2004, all existing judicial positions were declared vacant and open for competition to all legal professionals who fulfilled the legal prerequisites for becoming a judge. Because most judges (with the exception of those at the state level and in the Brčko District) were required to reapply for their positions and did not receive any priority in the reappointments, this meant they were not to enjoy life tenure. As a result, approximately 30% of incumbent judges were not reappointed, while around 20% of judges appointed in the course of this process came from outside of the judiciary. *See* FINAL REPORT OF THE INDEPENDENT JUDICIAL COMMISSION: JANUARY 2001-31 MARCH 2004 at 63 (Nov. 2004) [hereinafter IJC FINAL REPORT]. Those sitting judges who failed to be reappointed moved mostly to private practice of law.

Despite being carried out in an objective and transparent manner and the apparently justified reasons behind the reappointment process (including a generally accepted opinion that the professional quality of the judiciary was poor and its level of independence was low, as well as perceptions of the strong political influence during the post-war judicial appointments), this initiative raised doubts among many judges regarding security of their life tenure. For instance, one judge noted in this regard that she was now on her third life appointment to the same position, having successfully been reappointed twice when prior life tenures were nullified. Others noted concerns that elimination of judicial positions in 2003-2004 violated their constitutional rights to life tenure under the previous reappointment initiative and called into question the security and validity of the constitutional system.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

Conclusion	***Correlation: Neutral***	***Trend: ↔***
Presently, judges are advanced through the judicial system on the basis of the years of experience on the bench, but other criteria for advancement are currently being developed and improved by the HJPC. It is too early to analyze these criteria by an objective standard.		

Analysis/Background:

The HJPC has the responsibility for promotion and advancement of judges. This responsibility stems from its competencies to appoint all judges and court presidents and court levels, as well as to set criteria for performance evaluation of judges. HJPC LAW arts. 17(1), 17(22). The HJPC developed objective criteria for initial appointment of judges (as described in Factor 2 above), but has not yet published criteria for attaining appointment to higher positions.

The HJPC has responsibility for annually reviewing the performance of judges. RS LAW ON COURTS art. 48; FBIH LAW ON COURTS art. 41. The HJPC has rejected the previous quota system as the basis for the annual review and advancement of judges and is developing new criteria. The quota system required judges to meet a monthly target of completed events that did not take into account the complexity of cases or types of events required. As an unintended result, many judges focused their efforts on simple actions that achieved quotas without regard to whether the actions furthered the overall administration of a case or, more generally, justice.

The HJPC is therefore currently developing a review system based on weighted averages, in order to encourage judges to focus on concluding more complex cases, which were normally

ignored or avoided under the old system. They are also expected to include such indicators as number of cases reversed on appeal. There is a wide support for the concepts of this new approach among judges and strong interest in seeing it completed and implemented. The annual review will become the basis for determining salary increases and any other benefits of annual advancement.

For promotion, the only published criteria are those related to the mandatory minimum level of experience and other qualifications required for each position. *See* Factor 1 above for additional details. There are not yet any published standards for preferring one candidate for promotion over another. During the most recent round of reappointments in 2004, a number of judges moved into higher level courts. Judges and lawyers expressed consternation at the lack of transparency perceived in the process. In most cases, respondents felt that the appointees were qualified, but were displeased that no basis for the choices had been published. If transparent, objective criteria were actually applied, this was not adequately communicated to the public at large.

Appointment to court president positions is based on the same criteria and procedures as regular judicial appointments. One additional selection criterion is proven managerial experience and leadership skills relevant to the operation of the court. Presidents of the BiH Court, the entities' Supreme Court, Brčko District Appellate Court, and district/cantonal courts are appointed from among judges on each court for a term of 6 years, while presidents of basic/municipal courts are appointed for 4-year terms. All court presidents are eligible for repeat appointments to the same positions. HJPC LAW arts. 23(2), 25(2), 26(2), 27(2), 28(2).

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	***Correlation: Positive***	***Trend: ↔***
Judges in all jurisdictions enjoy immunity for actions taken in their official capacity.		

Analysis/Background:

Judges and prosecutors "shall not be prosecuted, arrested, or detained nor be subject to civil liability for opinions expressed or decisions taken within the scope of official duties." *See* HJPC LAW art. 87(1); *see also* FBiH CONSTITUTION art. IV.C.5(2); RS CONSTITUTION art. 126; BRČKO DISTRICT STATUTE art. 68.

On the other hand, judges do not enjoy blanket immunity from criminal prosecution or civil investigation. Unlike parliamentarians who enjoy immunity for all acts unless lifted by the relevant parliament, judges are subject to both criminal and civil liability. The law explicitly provides that judicial immunity may not act to bar or delay criminal or civil investigation of a matter concerning a judge. HJPC LAW art. 87(2). Public prosecutors may initiate criminal proceedings directly against judges, without any prior authorization of the court, the Ministry of Justice, or the HJPC. It is also possible to apply to the HJPC with a request to lift immunity of a judge in a given case, providing a justification that the judge was within the scope of his/her official duties and an explanation as to why the immunity should be lifted. HJPC Rules art. 65. If a criminal indictment is brought against a judge, the HJPC may suspend the judge pending investigation and trial. HJPC LAW arts. 76, 77; HJPC RULES art. 62. If convicted, the judge may be permanently removed by the HJPC. HJPC LAW art. 56(14).

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

Conclusion	***Correlation: Positive***	***Trend: ↑***
The Office of Disciplinary Counsel of the HJPC has authority to hear and decide complaints against judges for disciplinary infractions. When a complaint is accepted, the judge is subject to a public process with opportunity for defense and presentation of supporting evidence. Actual practice is still in the formative stages.		

Analysis/Background:

The HJPC has exclusive authority to hear and decide complaints against judges for official misconduct, which is exercised through the Office of Disciplinary Counsel [hereinafter ODC]. *See generally* HJPC LAW arts. 17(4)-(5). The Law contains an extensive list of disciplinary offenses for judges, including the following actions:

- violations of the duty of impartiality;
- bias or prejudice in the exercise of official duties due to a party's race, sex, religion, ethnic background, national origin, sexual orientation, or social and economic status;
- a patent violation of the obligation of proper behavior towards parties in a proceedings, their representatives, witnesses, and other individuals;
- disclosure of confidential arising in the judicial function;
- accepting gifts or remuneration for the purpose of improperly influencing judicial decisions or creation of appearance of such influence;
- exploiting judicial office to obtain unjustified advantages for a judge or other individuals;
- failure to disqualify oneself from hearing a case when a conflict of interest exists;
- neglect or careless exercise of official duties;
- issuing decision in patent violation of the law or persistent and unjustified violation of procedural rules;
- unjustified delays in issuing judicial decisions, or any other repeated disregard of the judicial duties;
- engaging in inappropriate communications with parties or their representatives;
- interfering in the jurisdictional activity of a judge or prosecutor with the intention of obstructing their activities or demeaning them;
- sentencing to imprisonment for a crime, or conviction of a crime which makes the judge unfit for judicial function;
- making any comment that might reasonably be expected to prejudice or interfere with a fair trial or hearing in a pending proceeding, or failing to ensure similar abstinence on the part of court staff who are subject to the judge's authority;
- engaging in activities incompatible with the judicial function;
- failure to comply with orders, decisions or requests of the HJPC without a justified reason;
- failure to respond to an inquiry pursuant to a disciplinary matter without a justified reason;
- providing false, misleading, or insufficient information with regard to job applications, disciplinary matters, or promotion or career development matters;
- failure to fulfill mandatory training obligations or any other obligations imposed by law;
- failure to act in accordance with the decision on temporary transfer to another court;
- behavior inside or outside the court that demeans the dignity of judge;

- any other behavior that represents a serious breach of official duties or compromises the public confidence in the impartiality or credibility of the judiciary.

See HJPC LAW art. 56.

Disciplinary proceedings can be instituted on the basis of filing a complaint through the ODC. Under the new system, any interested party may enter a complaint against a judge with the ODC. HJPC RULES art. 41. In fact, posters describing the process can be found in all courthouses, with address of the ODC and other necessary information. *See* Factor 22 below for further details. Additionally, the ODC can initiate disciplinary proceedings *ex officio*, following its own inquiries into allegations of judicial misconduct. HJPC LAW art. 66. Upon receiving a complaint, the ODC will conduct a confidential interview of the judge and the complainant, as well as other investigative actions, in order to determine whether there is sufficient evidence of commission of a disciplinary offense that warrants the commencement of disciplinary proceedings. HJPC RULES art. 42. The law specifically provides that all proceedings related to allegations of judicial misconduct conducted prior to the filing of a formal complaint by the ODC are confidential, unless the judge waives the right to confidentiality in writing. HJPC LAW art. 70. Thus, if no sufficient evidence of misconduct is found at this stage, the complaint will be dismissed and there will be no public record of the complaint. HJPC RULES arts. 41(5), 42(5), 57(2). If a basis for discipline is found, a meeting is scheduled with the judge to discuss voluntary disposition of the complaint by signing a written joint consent agreement that establishes a finding of disciplinary violation and sets forth a sanction. HJPC LAW art. 69.

If the judge does not agree to a voluntary disposition of the disciplinary charges, the ODC opens a public investigation, which includes subjecting the judge to a disciplinary hearing before the First Instance Disciplinary Panel of three members, the majority of whom must be judges. *Id.* arts. 60(3), 60(5). The panel shall be independent and with full authority to adjudicate disciplinary matters. *Id.* art. 60(2). Disciplinary hearings must be fair, transparent and public, and are guided by the applicable Code of Civil Procedure, unless special rules are provided for by the HJPC Law or the HJPC Rules. HJPC LAW art. 68; HJPC RULES art. 39. The judge in question has the right to file a response to the allegations stated in the disciplinary complaint. HJPC LAW art. 68(a); HJPC RULES art. 46. After that, the disciplinary panel will convene a pre-hearing conference and the main hearing. HJPC RULES arts. 47, 50. The burden on proof, by preponderance of evidence, is on the ODC. *Id*. art. 51. The judge in question has the right to be represented by the legal counsel of his/her choice throughout the proceedings. HJPC LAW art. 68(c); HJPC RULES art. 50(4).

If the public hearing results in finding inappropriate judicial conduct, the judge will be subject to appropriate disciplinary sanctions. These include: a written warning that shall not be made public; public reprimands; reduction of salary up to 50% for a period of up to one year; temporary or permanent reassignment to another court; and removal from office. For court presidents, sanctions also include demotion to an ordinary judge. Further, a judge may be ordered to participate in rehabilitative programs, counseling or professional training for a period of up to six months, instead of or in addition to the disciplinary measures. HJPC LAW art. 58; HJPC RULES art. 37(2). More than one sanction can be imposed against a judge found guilty of disciplinary misconduct. Any disciplinary measures imposed must be proportional to the misconduct, and must take into account the number and severity of the disciplinary offense and its consequences; the degree of responsibility; circumstances under which the offense was committed; previous behavior of the offender; and any other circumstances, such as the degree of remorse and/or cooperation by the judge during the disciplinary proceedings. HJPC LAW art. 59(1); *see also generally* HJPC RULES art. 51(4).. Removal from office as a disciplinary measure may only be used in cases of serious disciplinary offenses that make it clear that the offender is unfit or unworthy to continue to hold the judicial office. HJPC LAW art. 59(2).

Imposition of disciplinary sanctions can be appealed to the Second Instance Disciplinary Panel composed of three HJPC members, the majority of whom must be judges. *Id.* arts. 60(4)-(5);

HJPC RULES art. 53. It review the case in a closed session or conduct a hearing. HJPC RULES art. 54. If conducting hearings, they will be governed by the same procedural rules as the first instance hearing; however, it may not review new facts and evidence unless the appellant proves that he/she was unable, due to circumstances beyond his/her control, to present those facts during the main hearing. *Id.* arts. 53(4), 54. The Second Instance Disciplinary Panel is competent to confirm, reject or alter the disciplinary measures imposed by the First Instance Disciplinary Panel. HJPC LAW art. 60(4). From that level, the decision may be appealed to the full HJPC, which reviews the appeal in a closed session. *Id.* art. 60(6); HJPC RULES art. 55. Finally, if dissatisfied with that appeal, the judge may bring an administrative claim to the Court of BiH. Such appeal is possible only for decisions that provide for removal of a judge from office, and may be reviewed only on the grounds of material violations of the procedural rules or the erroneous application of the law. HJPC LAW art. 60(7).

HJPC is required to maintain records of all pronounced disciplinary measures, while decisions providing for removal of a judge must be published in the Official Gazette of BiH. *Id*. art. 74. All other decisions that contain findings of disciplinary liability and imposition of measures are posted on the notice boards on the HJPC's premises, and are published on its website (http://www.hjpc.ba), as well as in one of the daily newspapers. HJPC RULES arts. 37(1), 57(1).

In 2005, the ODC received 1,760 complaints, with 1,516 complaints against judges and 244 against prosecutors. It concluded 864 proceedings, leaving a backlog (including cases from 2004) of 1,140 complaints. Of the 864 proceedings, 846 were considered unfounded and were dismissed. The 18 legitimate complaints resulted in 2 private reprimands, 4 public reprimands, 8 reductions of salary, and 1 dismissal. In the other three cases, the accused judges resigned. *See* HJPC ANNUAL REPORT 2005 at 23-25.

The system, which has been functioning for approximately three years, has received mixed reviews. On the positive side, many judges and legal professionals find that it has injected appropriate seriousness and discipline into legislative behavior. Several judges have been disciplined. On the negative side, as explained in greater detail in Factor 22 below, the system is subject to abuse by parties or their attorneys dissatisfied with the outcome of the case.

There are also complaints that in several instances sanctions have been meted out for behavior that should not be sanctionable. In this regard, several judges have expressed concerns over the integrity of the new system of judicial discipline. They accept the premise that certain violations of ethics or law should result in termination of an appointment, but are not yet secure that the disciplinary practices and standards are sufficiently developed to ensure protection against inappropriately founded disciplinary complaints. In one case, a judge was reportedly subject to discipline for applying the law poorly, rather than simply having the decision corrected through the appellate process. If true, this case sets a poor precedent for independent thinking as it creates a risk of discipline when cases are reversed. In another instance, a judge was purportedly sanctioned for expressing a contrary opinion over an appeal. Clearly, it will take time to develop a body of consistent practice, but the fact that the complaint process is open permits the transparency necessary for the open debate that is required to refine the process. Nonetheless, the present insecurities will only be removed by regular, consistent application of appropriate standards over the long term. Until then, such doubts will not be unreasonable.

Factor 18: Case Assignment

Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.

Conclusion	***Correlation: Neutral***	***Trend: ↑***
Case assignment has been improved through introduction of rotating assignment procedures and random assignment functions of case management software. Assignment can be adjusted by the court president in the event of unbalanced workloads. Judges can be removed for good cause, but conflict of interest rules are still poorly understood and rarely applied in practice.		

Analysis/Background:

Rules for assignment of cases are the responsibility of the HJPC, per its authority to draft and approve the Book of Rules for the operation of courts. HJPC LAW art. 17(19). The current case assignment rules call for cases to be assigned chronologically on a rotating basis. *See* RULES OF INTERNAL COURT PROCEDURES art. 7 (O.G. SRBiH No. 3/76). At the same time, consideration is given for balancing caseloads among judges. This was initially introduced through the UN's Judicial Sector Assessment Project and remains a focus of USAID's Fostering an Investment and Lender-Friendly Environment [hereinafter FILE] (through case management software) and the JSDP programs. Pilot projects are beginning to introduce case management software that will provide for random, automated case assignment system. In both cases, court presidents have the authority to reassign cases based on the caseload of the judges.

Unlike under the previous system which was open to various forms of manipulation, practitioners and judges express general satisfaction with the current system. While recognizing that it is theoretically possible to influence the assignment of a case by bribing registration clerks, delaying registration until the desired judge came up, or influencing a court president, they felt that it would be difficult to do so, and such influence is not a problem in practice. Likewise, there were no accusations of court presidents manipulating assignments on the basis of "balancing the caseloads" in order to place politically disfavored cases with less experienced judges.

Removal or recusal of judges from a case is a different matter. While the law requires that judges recuse themselves from cases in which they have a conflict of interest, conflicts of interest rules are considered to be poorly understood by both the judges and the parties. The law sets forth five areas in which conflicts may arise, which can be summarized as business relationships, close family relationships, legal relationships (such as legal guardianship), participation in earlier judgment in the case, and "other." RS CODE OF CIVIL PROCEDURE art. 357; FBiH CODE OF CIVIL PROCEDURE art. 357. These "other" possibilities will need to be refined over time as practice and ethics rules develop, but clearly should include issues such as close friendship or other relationships which can give the appearance of bias and impropriety. In criminal proceedings, recusal is required if a judge is personally injured by the offense; he/she participated in the same case during preliminary proceedings or preliminary hearings, or as a prosecutor, defense attorney, legal representative of a victim, or was heard as a witness; he/she issued the decision that is the subject of appeal before him; or if circumstances exist that raise a reasonable suspicion as to the judge's impartiality. BiH CODE OF CRIMINAL PROCEDURE art. 29. Overall, these legal provisions have improved the basis for recusal practice, which previously permitted a number of frivolous claims that were typically used for purposes of delaying the case.

Several legal practitioners noted the problem of "small town syndrome" in which a judge has a conflict simply by having to live in a small community that may apply social sanctions for a "wrong" outcome. The law therefore permits removal of a case to another jurisdiction upon a

motion of a party or of the court itself. *See* RS CODE OF CIVIL PROCEDURE arts. 50, 51; FBIH CODE OF CIVIL PROCEDURE arts. 50, 51. In highly sensitive cases, particularly in criminal matters, the higher courts have earned a positive reputation for transferring cases outside of a district where there is a higher likelihood of inappropriate community pressure, pursuant to RS CODE OF CRIMINAL PROCEDURE art. 33 and FBIH CODE OF CRIMINAL PROCEDURE art. 35.

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

Conclusion	***Correlation: Neutral***	***Trend: ↔***

Each entity has an active judges' association that promotes the interests of the judiciary within a limited scope of issues, primarily such as salaries and working conditions. In addition, the nationwide Association of Judges of BiH was formally established in late 2005. Increasingly, all associations are taking a leadership role in a wider range of support and activities.

Analysis/Background:

The Association of Judges in the FBiH was founded in 1996. The Association of Judges in the RS was formed only in October 2005, having previously been combined with the Association of Judges and Prosecutors of the RS, which was founded in 1998. The RS Association separated from the joint association of judges and prosecutors in response to adoption of legal changes providing for an adversarial system, thus creating ethical barriers to a such joint representation. The joint association was active in developing services for its members and capacity to advocate policy changes.

The stated objectives of both judicial associations include, *inter alia*, strengthening of judicial independence; promoting the effacing functioning of the judiciary; providing to the competent government authorities proposals and opinions on draft laws related to issues important to the functioning of the judiciary; promoting professional advancement of judges; undertaking protective measures in the event of unjustified allegations against their members in the performance of official functions; and cooperation with judicial association at the national and international levels. *See* STATUTE OF THE FBIH ASSOCIATION OF JUDGES art. 6; STATUTE OF THE RS ASSOCIATION OF JUDGES art. 7.

Membership in the associations is voluntary and is open to all sitting and retired judges in BiH (including those on the Constitutional Court of BiH and the BiH Court). Members are required to pay a membership due of BiH KM 10 per month (approximately USD 6). As of late 2005, the FBiH Association had 367 members (or about 83% of all FBiH judges), and the RS Association had approximately 200 members (90% of all RS judges). The fact that almost all sitting judges are members of the judicial associations allows to conclude that associations enjoy good reputation among the judges.

Until recently, the judges' associations were perceived more as unions than as professional organizations, primarily advocating for improved salaries and working conditions of their members. This is changing significantly as a result of the many changes underway in the judicial system of the country. Although it is still too early to judge the success of the nascent RS Association, plans of both are similar. The associations see themselves as advocates for their needs of their members by improving not only their working conditions (salaries, staffing and physical infrastructure), but also the professionalism. The FBiH Association provides some training through its annual meetings and is cooperating with the HJPC and the FBiH JPTC to

better identify and prioritize training needs. It is also seeking greater input into the selection of judges through an approval or recommendation process. Although each judicial association has one representative at the HJPC and thus a nominal role in the selection of judges, there is controversy over the choice and role of that representative.

The associations are perceived as powerful advocates of professional interests of judges. They have played a role in some of the legislative changes over the past few years. In the RS, this took place under the combined association of judges and prosecutors. Both had input into various reforms of the Codes of Civil Procedure, the Laws on Enforcement Procedure and the new Code of Judicial Ethics.

Representatives from the two judicial associations have discussed the formation of a national association, either as a separate umbrella association for the existing organizations or as a single association for all BiH judges. Both groups recognize the need for a state-level association for improved representation of judges both nationally and internationally. As a result of these discussions, a unified Association of Judges of BiH was established at the end of 2005; however, the formation of its internal structure is still ongoing at the time of publication of this JRI.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

Conclusion	***Correlation: Neutral***	***Trend: ↑***
Judicial decisions are generally based solely on the facts and law without undue outside influence. While there are still attempts at, and perceptions of, outside influence, their magnitude has decreased significantly since the reorganization of the judicial system.		

Analysis/Background:

The Constitutions of both entities, as well as the Brčko Distric Statute contain provisions that guarantee judicial independence. Thus, judicial power is to be exercised autonomously and independently, and judges shall adjudicate on the basis of the Constitution and the laws. RS CONSTITUTION art. 121; FBIH CONSTITUTION arts. IV.C.4(1), IV.C.4(3). The courts shall render justice impartially in accordance with the Constitution and laws of the BiH and the Brčko District laws. BRČKO DISTRICT STATUTE art. 62(2). Similarly, the recently adopted Code of Judicial Ethics mandates that judges uphold and exemplify judicial independence in both individual and institutional aspects. A judge is to exercise the judicial function independently on the basis of the his/her assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason. CODE OF JUDICIAL ETHICS art. 1. A judge found guilty of violating the law with the aim of benefiting or harming another, passing an illegal judgment, or otherwise violating the law in the performance of his/her official duties is subject to criminal responsibility in the form of imprisonment for a term of six months to five years. BIH CRIMINAL CODE art. 238.

In general, judges, prosecutors and lawyers agree that the reorganization of the courts, especially through the reappointment of judges by the HJPC, has eliminated the greater part of improper influence by other branches of government and has firmly established the concept, if not the habits, of judicial independence. Simultaneously, creation and operation of the ODC (*see* Factor

17 above) has reduced the likelihood and incidence of corruption, according to respondents. Various respondents noted the positive impact of higher judicial salaries and the move to an adversarial system in increasing the integrity of the system as a whole. Although there is widespread popular belief that bribery is common, which in turn results in the low levels of public trust in the judiciary, one lawyer noted that this belief is furthered in part by lawyers who claim to have to bribe judges in order to extract more money from their clients, which they pocket while giving the impression that they have paid off a judge.

There are, of course, still instances of undue and improper influence on judicial decision-making. While most respondents believed that there were substantial changes in the incidence of political influence and bribery, improvements in some areas were less robust. First, there appears to be a difference in perceptions (if not reality) in the integrity levels of smaller versus larger courts. Assessments of improper influence varied between practitioners from Sarajevo – where there was substantial satisfaction with improved circumstances – and those from smaller jurisdictions. Several respondents attributed this to the "small town syndrome" where the social pressures of living and raising a family in a small town can influence judges, directly or indirectly, not to take unpopular stances. Nonetheless, this is clearly not a pervasive concern, as a number of judges and prosecutors are regularly taking on highly politicized issues through prosecution of politicians, war criminals, and vested economic interests.

Second, there are ongoing concerns about the use of budgetary resources by politicians at the cantonal and municipal levels to apply inappropriate pressure. A number of respondents specifically cited the case of Bihac, in which the cantonal government allegedly blocked funding of the courts because of a criminal indictment of a leading politician by the cantonal prosecutor, resulting in salary delays of three months. Because the courts still do not have control over their finances, there is room for attempted manipulation of the system by those who control disbursement of funds.

Third, a number of respondents noted the use of indirect influence through local media. Specifically, they cited the use of highly prejudicial and biased reporting by politicized newspapers during the conduct of a case in a perceived attempt to create social pressure or otherwise express political expectations for the outcome of the case. Some further noted that suggestions of impropriety are often advanced by media reporters who do not understand either the law or the judicial process, and thus assume improprieties when rulings do not go as desired by them. Whatever the cause, "trial by media" is a common problem that can exert improper influence on susceptible judges.

Fourth, several judges remarked upon the problem of self-censorship, especially during periods of reappointment. The institution of life tenure has been very inconsistent over the past ten years. One judge interviewed had already received three life tenures, with the first two abrogated through the reappointment process. As a consequence, some judges admit that they are more circumspect about taking positions that run counter to known expectations of those with the authority to vitiate life tenures.

Finally, the perception of improper influence is a problem inherent in a system that, as further explained in Factor 24 below, does not rely upon or regularly produce reasoned, written decisions. With it being difficult, if not impossible, to ascertain the legal or factual basis of a judge's decision, the losing party and the press frequently suspect and report impropriety.

Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

Conclusion	***Correlation: Neutral***	***Trend: ↑***
A judicial code of ethics was adopted in late 2005. Training programs are being developed as part of the mandatory curriculum for judges.		

Analysis/Background:

On November 28, 2005, the HJPC promulgated the Code of Judicial Ethics. The Code is based substantially on the Bangalore Principles of Judicial Conduct, an internationally recognized standard for judicial ethics. It was prepared with assistance from foreign and local experts and employed a process of adoption that included substantial vetting and input from the judiciary and the legal community as a whole over the prior year in order to ensure participation, knowledge and ownership. Judges are generally satisfied with the content and quality of the Code.

The Code is intended as a guideline, providing principles of conduct that will need practical development over time. While the Code is advisory in nature, it serves as an interpretative guide to disciplinary violations spelled out in the HJPC Law. *See* CODE OF JUDICIAL ETHICS, Preamble.

The Code expressly promotes independence, impartiality, equality, integrity and propriety, and professionalism in the judiciary, calling on judges to exhibit higher standards of conduct not expected of the rest of the population and to accept personal restrictions that might be viewed as burdensome by the ordinary citizens. *Id*. arts. 1.5, 4.3. The ethical principles apply to conduct of judges both in and out of court. Recognizing that judicial independence is a pre-requisite to the rule of law and a fundamental principle of fair trial, the Code urges the judges to uphold and exemplify judicial independence in both its individual and institutional aspects. *Id.* art. 1. Further, judges must perform their duties and treat all parties to a dispute impartially, i.e., without favor, bias, or prejudice. Impartiality applies both to judicial decisions and the process by which the decisions are made. *Id.* art. 2. Impartiality also implies that judges should refrain from engaging in activity that, in the mind of a reasonable person, could give rise to the appearance that the judge is engaged in political activity, and therefore they may not belong to political parties, attend political gatherings or fundraisings, contribute to political campaigns, or publicly participate in controversial political discussions that may directly affect the administration of justice. *Id*. arts. 2.2.3-2.2.4. Impartiality also means that judges are prohibited from engaging in ex parte communications. *Id.* art. 2.6.

The ethical principles of integrity and propriety require judges to act with moral uprightness, honesty, and soundness, ensuring that their conduct is above reproach in the view of a reasonable observer. *Id.* art. 4.1. To this end, a judge shall not allow his/her family, social, or other relationships to improperly influence his/her judgment or to use the prestige of the judicial office to advance the private interests of the judge, his/her family, or other persons. *Id*. arts. 4.7-4.8. In the event that a conflict of interest arises that puts in doubt the judge's impartiality in a given case, the judge must recuse himself/herself from hearing that case. Such conflicts include, but are not limited to, cases where a judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts; a judge believes that a reasonable person would have a reasonable suspicion of a conflict between a judge's personal interest and his/her judicial duty; or a judge or his/her family member has an economic interest in the outcome of the case. *Id.* arts. 2.2.6, 2.5.

Many of the provisions found in the Code of Judicial Ethics have corresponding statutory counterparts. The HJPC Law prohibits judges from engaging in any function incompatible, or one that can be seen as incompatible, with the fair and impartial performance of their duties, or which can affect the independence or dignity of judicial office, cast doubt on a judge's ability to act impartially, or demean judicial office. *See* art. 82(1). Specifically, a judge may not be a member of a political party or associations or foundations connected to political parties, or of an organization that practices invidious discrimination. *Id.* arts. 82(2)-(3). A judge also may not hold any other public office, engage in private practice of law or other remunerative activities, serve on executive or supervisory boards of public or private companies, or perform any other activities that may interfere with the performance of judicial duties. *Id.* art. 83. However, judges are allowed to engage in academic or scholarly activities, and may be remunerated for these. *Id.* art. 83(2). Judges are required to file with the HJPC annual financial statements reporting their extrajudicial activities and remuneration received, as well as information about their spouses or children residing in the same household. *Id*. art. 86.

In case there are doubts as to compatibility of a certain activity with the judicial office, the relevant court president or the judge in question may request the HJPC to provide a binding opinion on this issue. *Id.* arts. 84-85; HJPC RULES art. 64. During 2005, the HJPC received five such requests, which resulted in three findings of compatibility and two findings of incompatibility. *See* HJPC ANNUAL REPORT 2005 at 27.

Due to the absence of a professional code, to date there has been limited training on the subject of judicial ethics, with the exception of trainings sponsored by donor organizations such as ABA/CEELI or the Open Society Foundation. With the adoption of the Code, the JPTCs are currently preparing courses and materials for regular presentation of judicial training in ethics.

Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

Conclusion	***Correlation: Positive***	***Trend: ↑***
A well publicized, meaningful complaint process has been established for registering complaints concerning judicial conduct.		

Analysis/Background:

The existing system for registering handling complaints against judicial conduct was introduced in 2004. One of the functions of the HJPC is receiving complaints against judges. HJPC Law art. 17(4). Presently, all complaints against judges are handled by the HJPC's ODC, which has exclusive authority to hear, investigate and prosecute complaints. *Id*. art. 64. The ODC is led by a Chief Counsel, who must be an individual of high moral standing and satisfy the minimum requirements for appointment as a judge or prosecutor. *Id.* art. 64(3). The present Chief Counsel is a local legal expert that recently replaced an international prosecutor. In addition, the ODC is staffed by four attorneys, an investigator, and an administrative assistant.

Public information regarding the procedure for filing complaints has been widely disseminated, with brochures and posters prominently displayed in every courthouse. The procedure is relatively simple. Any person may file a written grievance with the ODC setting forth the basis of the complaint. HJPC RULES art. 41(1). Each complaint must be accompanied by the substantiating evidence. *Id.* The ODC also has the discretion to decide whether anonymous complaints merit further investigation. *Id*. art. 41(3). The ODC privately investigates the matter,

examining any evidence presented, obtaining additional documents as evidence, and interviewing the complainant and the judge. *Id.* art. 42(2). If the ODC finds the complaint to be "trivial, vexatious, made for improper purpose, manifestly without substance, or [not warranting] further consideration," the party bringing the complaint is notified and the matter is dismissed. *Id*. arts. 41(5), 42(5). In addition, the ODC must refer the instances of filing false complaints against judges to the competent prosecutor. *Id.* art. 41(6). If, on the other hand, the ODC finds that the matter is founded in potentially actionable conduct, the formal disciplinary proceedings are instituted and conducted according to the procedure described in Factor 17 above.

The ODC has received an average of 135 complaints per month since June 2004. As shown in the chart below, the vast majority – approximately 98% – were considered to be unfounded by the ODC. Most of these arose from complaints about procedural errors and delays not involving misconduct, or concerned individuals and matters not within the ODC's competency. Actionable complaints in 2004 resulted in five public reprimands with fines, and one public reprimand without a fine. In 2005, the 18 legitimate complaints resulted in 2 private reprimands, 4 public reprimands, 8 reductions of salary, and 1 dismissal. In the other three cases, the accused judges resigned. *See* HJPC ANNUAL REPORT 2005 at 25.

DISCIPLINARY COMPLAINTS AGAINST JUDGES, JUNE 2004-DECEMBER 2005

Complaints	June-December 2004	2005	Total
Received	813	1,760	**2,573**
Against judges	717	1,516	**2,233**
Against prosecutors	96	244	**340**
Resolved	515	863	**1,378**
Unfounded	509	845	**1,354**
Founded	6	18	**24**

Source: HJPC Annual Report 2005 at 24.

One of the most frequent criticisms of the new system has been the fact that it is subject to abuse, whereby parties or their attorneys threaten to bring, and actually do bring, complaints if a judge finds against them. Although this may not result in sanctions (as seen from the Table above, only 2% of complaints in 2005 resulted in disciplinary action), they do take time and create tensions, so that the threat of a complaint can serve as a form of intimidation for some judges. Indeed, unwarranted complaints are frequently based on little more than dissatisfaction with the outcome of a case, and many of these are brought by unrepresented parties who do not adequately understand the legal basis for complaint. This type of complaint can be expected to diminish over time through better public education as the process matures. Most lawyers are slow to utilize this option, even when they may have a valid basis, for the simple reason that filing a complaint tends to sour relationships with the judge. Judges complain that delays are beyond their control because of the overwhelming caseload.

One of the most frequent type of complaints (most not involving misconduct) has been for delays relating to a judge's failure to meet statutory timelines for acting, such as scheduling or holding a hearing or issuing an opinion. Judges counter that the overwhelming case backlogs, inherent delays in the existing system, and other circumstances beyond their control make such complaints unfair (and only a few have amounted to misconduct). Practitioners, however, note that the complaints have been generally effective in speeding up the particular case in question and have generally resulted in improved deadline performance.

Dissatisfaction with the system arises at several levels. First, judges feel rather beleaguered. They have been consistently blamed by the press and politicians for the delays and backlogs inherent in the system passed down from the Yugoslav era. Although that system has been fundamentally redesigned, the backlog remains and many of the delaying tactics of practitioners are still widely used. In other words, most of the systemic problems with the judiciary have little to do with judicial performance, but judges have been the scapegoats. The new disciplinary system,

with its prominent public information posters throughout the courthouses, adds insult to injury. One judge stated his perception of unjustified persecution succinctly: "The poster tells you everything but how to kill a judge." For better or worse, the solution lies in consistently improved judicial performance under the new legal system, which will take time.

Second, a number of lawyers and judges noted that the instructions for the complaint system provide too little information on the parameters of legally appropriate complaints. They suggest that more materials should be provided, including some sort of standardized form for complaints, which could provide examples or instructions on appropriate versus inappropriate complaints. They note that even though frivolous complaints are rejected, they result in a loss of time and morale in having to mount a defense.

Some judges are concerned about the lack of sanctions for abuse of the complaint process. They note that the process is being used by some parties and lawyers as a form of improper influence, through which they seek to intimidate judges with the threat of a disciplinary hearing, and these judges do not feel equipped to sanction them for such behavior. In fact, judges can file complaints through the disciplinary committees of the bar associations should they believe that a lawyer has misused the complaint process, and they can issue sanctions for inappropriate behavior under their contempt powers during a trial. Nonetheless, most judges are not inclined to elevate the level of conflict in such matters through these options, and some are simply not aware of their availability.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

Conclusion	***Correlation: Neutral***	***Trend: ↔***
Courtroom proceedings are sufficiently open to the public and the media, although lack of sufficient space can act as a constraint in some situations.		

Analysis/Background:

The Constitutions and applicable procedural laws guarantee that all court hearings in BiH are conducted in public, unless the legislation provides otherwise for certain exceptional situations. *See* RS CONSTITUTION art. 124; FBIH CONSTITUION art. IV.4(5); BIH CODE OF CRIMINAL PROCEDURE art. 235. The public may be excluded from a court hearing in the interests of national security, to preserve a national, military, official or important business secret, to protect public peace and order, to preserve morality in the democratic society, or to protect the personal and intimate live of the parties or the interest of juveniles or witnesses. BIH CODE OF CRIMINAL PROCEDURE art. 235; *see also* RS Constitution art. 124. The same or similar provisions may be found in the entities' codes of civil and criminal procedure. *See* RS CODE OF CRIMINAL PROCEDURE art. 243; FBIH CODE OF CRIMINAL PROCEDURE art, 250; BRČKO DISTRICT CODE OF CRIMINAL PROCEDURE art. 235; BIH CODE OF CIVIL PROCEDURE art. 86; RS CODE OF CIVIL PROCEDURE art.119; FBIH CODE OF CIVIL PROCEDURE art. 118; BRČKO DISTRICT CODE OF CIVIL PROCEDURE art. 239.

Legal professionals and media representatives uniformly find that the courts are indeed open to the public and the media. Journalists had no complaints regarding access to trials or hearings. A number of courts have established public relations or media offices that respond to questions from the media or even issue press releases on occasion. Openness, however, is limited by several factors.

First, the judiciary and media hold each other in mutual contempt and disrespect. Judges complain that there are few, if any, qualified reporters covering the courts who understand the laws or processes. In fact, the BiH media do not have any substantive pre-requisites or follow-on training for journalists who cover the courts. Judges further complain that the media is often biased for political reasons, and hence they distrust reporters. Reporters complain that judges are not accustomed to be challenged or questioned, and therefore are not sufficiently forthcoming or helpful when being interviewed. There have been some attempts at joint meetings between judges and the press to improve both knowledge and understanding, but participants complain that these have tended to devolve into accusations and blame sessions, rather than helpful training.

Additionally, physical conditions create practical limitations on access by the press and the public. Most hearings and trials are held in small, cramped offices of judges, not larger courtrooms. Although a few courts have been remodeled to provide larger courtrooms, especially in highly publicized trials, this is still the exception. Redesign of civil procedure rules, however, may serve to reorganize the use of existing and improved facilities more effectively. The move from the inquisitorial system of multiple "mini-hearings" followed by eventual judicial decision to an adversarial system utilizing only a preliminary hearing followed by a "single-event" trial, leads to different demands on office space, some of which can be met by better scheduling and space management. Even so, some courts simply do not have courtrooms with ample conditions to permit necessary access to the public and the press.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

Conclusion	***Correlation: Neutral***	***Trend: ↑***
Judicial decisions are a matter of public record, but in practice the ease of obtaining the decisions is inconsistent. Selected appellate opinions are published and open to scrutiny.		

Analysis/Background:

According to the law, the work of the courts is open to the public. One of the ways to accomplish transparency of the judiciary is by publishing court decisions and other information of interest to the public. RS LAW ON COURTS art. 8; FBIH LAW ON COURTS art. 8.

The quality and accessibility of judicial decisions are improving, but are still not adequate for the development of self-refining jurisprudence. Principal appellate courts (primarily the Supreme Courts and the Constitutional Courts) publish regular bulletins of selected cases considered germane to the bar and judiciary, although they are edited to remove the names of the parties and aspects of the facts that might help to identify the parties. These generally appear in annual compilations, with monthly publications available in some jurisdictions. There is also a magazine of judicial practice published occasionally. These resources are intended to be instructional on points deemed important to the legal community. The legal community is generally satisfied with the quality and utility of these opinions, with particular praise for the quality of research and writing from the BiH Constitutional Court. However, practitioners find these materials insufficient to meet their needs in understanding, interpreting, and applying the law in rapidly changing legal environment. Nor are they satisfied with indexing, as cases are often indexed only chronologically by subject matter area (e.g., criminal, civil, commercial), with no system of headers or key words for more refined research. This, of course, is in keeping with the former

system – with only a few cases published each year, practitioners could be expected to read them all and index them as they saw fit. As publication increases, this will no longer be sufficient.

Opinion is divided on how much should be published. A number of judges and practitioners support universal publication and dissemination of all judicial decisions over the Internet, not just the edited selections currently available, at least once the courts have been networked and can produce these electronically. Those who argue for such broad publication criteria voice a change in values from those underlying the previous, inquisitorial judicial model. They recognize that an adversarial system requires greater resources for supporting a party's position, and wish to have access to all jurisprudence. With increasing Internet access among the newly developed automated court systems, there would be no practical barriers to universal publication, but laws and regulations will need to be amended to permit and promote such expanded access. On the other hand, those supporting a continuation (and partial expansion) of the current system of selecting only "important" cases for publication have maintained a more paternalistic approach as to what others are deemed to need, with this approach deriving directly from the inquisitorial system in which judges alone had responsibility for the quality of the outcome.

On a more practical side, the JPTCs are developing programs to improve the quality of opinions. Only appellate courts are consistently producing opinions of sufficient quality to provide a basis for public and academic scrutiny. Opinion writing in the lower courts, on the whole, is substandard. These opinions very often lack any useful recitation of facts, law or reasoning, and thus provide little basis for scrutiny, challenge or appeal. Examples were given of opinions that were limited to a statement that "upon careful review of the facts and law, the court finds for the plaintiff." Others joked that the long form of this opinion included a recitation of all the events that had preceded the decision (hearings, pleadings, witnesses), then reverted to the same, unsupported decision. In fact, the lack of properly prepared decisions is a significant factor in the practice of reopening cases on appeal, simply because there is little in the record to indicate the legal or factual basis for a finding. Consequently, opinion writing classes are being included in the curricula for new and sitting judges. In addition, poor opinions frequently give grounds for the losing parties and the press to suspect and report impropriety on behalf of judges.

In addition, USAID's JSDP program is initiating a project with the HJPC to establish a Court Documentation Center, which will include a database of judgments that would be collected and distributed publicly.

Several factors can be expected to increase the quality and publication of decisions. First, the adversarial system is already increasing the demand for better quality opinions that would be more readily available. Although opinions have no binding precedential value, the doctrine of consistency requires a reasonable level of consistent outcomes for similar facts and circumstances. Under the adversarial system, lawyers now have the burden and the responsibility of finding materials to support their arguments. This will eventually result in an increased number of requests for published, transparent, reasoned opinions. Second, the new system of judicial discipline opens judges to a greater risk of being challenged for improprieties. Well reasoned opinions reduce the likelihood that they will be accused of improprieties or incompetence, so that it is now in their best interest to produce better written decisions. Third, changes to appellate practice will create pressure from the appellate courts for decisions that can be effectively reviewed, rather than simply remanded as they have been in the past. Finally, performance standards being developed by the HJPC will include reversals on appeal for first instance judges, thus creating additional pressure for well written, well reasoned opinions that are less likely to be reversed.

Recent reforms have created an environment in which judicial practice of producing and publishing better reasoned decisions should improve substantially. Today, however, the practices do not yet fully support the needs of the legal and judicial communities.

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

Conclusion	***Correlation: Neutral***	***Trend: ↑***

Courts do not create a verbatim transcript of the proceedings, but some are introducing audio recording technology in its place. The public has full legal access to the records, but court practice in providing access varies significantly, thus reducing access to case files and transcripts.

Analysis/Background:

Generally, all actions undertaking in the course of criminal proceedings shall be audio-recorded. BIH CODE OF CRIMINAL PROCEDURE art. 155(1); RS CODE OF CRIMINAL PROCEDURE art. 66(1); FBIH CODE OF CRIMINAL PROCEDURE art. 169; BRČKO DISTRICT CODE OF CRIMINAL PROCEDURE art. 155. Court records in civil proceedings are prepared in written format. RS CODE OF CIVIL PROCEDURE art. 373(1); FBIH CODE OF CIVIL PROCEDURE art. 373(1).

In practice, courts do not produce verbatim transcripts of proceedings. However, this is beginning to change through the introduction of technology and the change in judicial systems.

On the technology side, several courts have been equipped with audio and/or video recording capacity, but additional investment is needed to equip the remaining courts. Recording equipment is being introduced in various pilot courts, which will be expanded as pilot programs roll out into more courts. The audio-recording of all criminal proceedings as mandated by the Code of Criminal Procedure is not always possible due to lack of equipment. High profile cases, such as war crimes, are generally being recorded now.

Judicial reforms have also introduced a greater perceived need for complete transcripts. Under the inquisitorial system inherited from the former Yugoslavia, the judge was the arbiter of what should, and did, go into the record. The adversarial system is changing the dynamics of these practices. Attorneys (or, if unrepresented, the parties themselves) are responsible for providing arguments and evidence sufficient for the judge to make an appropriate decision. Increasingly, attorneys wish to capture the entire transcript in order to prepare or defend against appeals more effectively. Introduction of recording equipment, occasionally accompanied by transcript services that reduce the recordings to a written record, are beginning to address and stimulate demand for a more complete record.

Parties in proceedings, as well as the general public have the right to access court records in accordance with the law. RS LAW ON COURTS art. 58; FBIH LAW ON COURTS art 64. The Freedom of Access to Information Act [hereinafter FOIA] legislation provides that everyone has the right to access information in control of a public authority, and each public authority has a corresponding obligation to disclose such information. Because courts are considered as "public authority" under FOIA, everyone, regardless of his/her legal interest in the case, has the right to access court records. BIH FOIA art. 5 (O.G. BiH No. 28/00); RS FOIA art. 4 (O.G.R.S. No. 20/01); FBIH FOIA art. 4 (O.G. FBiH No. 32/01). The law recognizes several exceptions that allow the public authority to reject such request (e.g., confidential commercial information, protection of privacy, etc.), using the "public interest" test. BIH FOIA arts. 6-9; RS FOIA arts. 6-9; FBIH FOIA arts. 6-9. However, rejections of free access to information may be appealed. BIH FOIA art. 14(3); RS FOIA art. 14(3); FBIH FOIA art. 14(3).

Despite the fact that case files are legally public records, access to court records by the public is inconsistent, with different courts and judges applying different standards. This has been the subject of complaints. Some courts simply refused to deliver filmed court records to journalists, while others require a party requesting records to prove some legal interest in the case. In yet other courts, filing clerks sometimes require judges to grant permission before they will permit journalists or members of the public to review records. In yet another case, a court was reported to have handed out brochures on FOIA to anyone seeking access to court records, thus requiring them to file a written request under FOIA. This procedure is time-consuming, rendering journalists unable to inform the public on trials in an accurate manner. Some courts are more open and will simply allow the public to request, review and even copy records, if they can find the files. The BiH Court copies the hearing records to CD-ROMs that are delivered to journalists; however, such copy includes only segments of the proceedings as redacted by the Court's officials rather than the entire proceedings. In short, the laws granting access are in place, but the practices need further development. It will take time to iron out these inconsistencies.

VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

Conclusion	***Correlation: Neutral***	***Trend: ↔***
Each judge has basic staff support, but the structure and quality of staffing are not always optimal for a given judge or for the court as a whole.		

Analysis/Background:

Staffing of courts has been in flux over the past few years. In 2002, the IJC recommended the reduction of court staff to ratios of 3 staff per judge in Municipal and Basic Courts, and 2.5 staff per judge in Cantonal, District and Supreme Courts. These ratios were not based on any particular analytical findings, but rather on comparison to other systems. *See* IJC FINAL REPORT at 102. Most courts now approximate these prescribed ratios.

COURT SUPPORT STAFF IN BiH COURTS

Court	Number of Judges	Number of Support Staff			Staff per Judge Ratio
		Permanent	Temporary	Total	
BiH Court	**20**	**49**	**7**	**56**	**2.8**
RS Courts	**214**	**631**	**69**	**700**	**3.3**
Supreme Court	15	29	1	30	2.0
District Courts	57	124	10	134	2.4
Basic Courts	142	478	58	536	3.8
FBiH Courts	**441**	**1,282**	**101**	**1,383**	**3.1**
Supreme Court	22	57	0	57	2.6
Cantonal Courts	115	227	31	258	2.2
Municipal Courts	304	998	70	1,068	3.5
Brčko District Courts	**22**	**59**	**1**	**60**	**2.7**
TOTAL	**697**	**2,021**	**178**	**2,199**	**3.2**

Source: HJPC ANNUAL REPORT 2005 at 51-52.

Many respondents currently feel that court support staff, even when sufficient in number, are inadequately trained and thus insufficiently productive to properly support the courts. An additional concern is low morale of court personnel, particularly due to the low salaries they receive in comparison with judges. Pilot courts are providing training to staff in the use of new software and systems. This should provide a basis for analyzing staffing needs in light of any efficiencies produced through the use of case management software and its accompanying systemic changes in court and case management.

The respective entity's Minister of Justice has authority to analyze staffing patterns and establish criteria related number of court support staff. RS LAW ON COURTS art. 49; FBIH LAW ON COURTS art. 42. However, no comprehensive study on this matter has yet been produced. Such work is expected in connection with the pilot court projects underway. For existing staff, many judges noted the need for more legal assistants (similar to clerks in some Western systems), who provide valuable assistance in research and drafting of decisions. They may also handle smaller claims directly, subject to supervision by judges. Legal assistants are paid only half the salary of a judge, and thus provide an efficient use of scarce budgetary resources in most cases.

A special problem relates to the salary levels of court support staff. Unlike judicial salaries, non-judicial personnel salaries have not been increased during the recent reforms, and in fact the last raise occurred before 2000. As a result, support personnel in municipal court in FBiH received, on average, between BiH KM 307.5 (USD 187.5) and BiH KM 545.5 (USD 333) per month in 2005, with the maximum non-judicial salaries ranging between BiH KM 329 (USD 200.6) and BiH KM 1,011 (USD 616.5). The ratio of average judicial to non-judicial salaries on these courts ranged from 5.01 to 8.89. In the RS district courts, court staff received, on average, BiH KM 342.86 (USD 209) to BiH KM 618.56 (USD 377) per month, with the maximum salaries ranging between BiH KM 566 (USD 345) and BiH KM 954 (USD 582). The ratio of average judicial to non-judicial salaries on these courts ranged from 5.61 to 10.13. *See* REFORM OF JUDICIAL SALARIES in BiH at 12-13. These significant differences in salaries results in lack of motivation of staff and discourages team work in resolving various problems facing the courts.

There is currently no standing system for training of court staff. Recently, a national association of court staff was formed, and this may serve as a provider of training services, but is unlikely in the short-term to move beyond issues of salary and conditions of employment. It is still too early to ascertain the effectiveness of the association.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

Conclusion	***Correlation: Neutral***	***Trend: ↔***
The HJPC determines the number of judges needed in each court based on the level of population and caseload for each court.		

Analysis/Background:

The number of judges in each court is determined by the HJPC, after consultation with the relevant court president, the relevant budgetary authority, and the relevant Ministry of Justice. HJPC LAW art. 17(25). In 2002, the IJC devised a plan for restructuring the courts, based on population, caseload, and projection of needs under the radical changes to the Codes of Civil Procedure and other laws introducing the new adversarial system. This resulted in an overall reduction in the number of first instance courts, with the FBiH municipal courts reduced from 53 to 28 and the RS basic courts reduced from 25 to 19 (an overall reduction . These structural

changes and new standards required a diminution in the overall number of judges as well, hence the second round of reappointments in 2003, despite life tenures granted during the earlier reappointment process. Based on the recommendations of the IJC and the HJPC, the number of judges in the first and second instance courts was reduced from 868 to 629, or by 28%. *See generally* IJC FINAL REPORT at 99-100.

There are currently 697 sitting judges in BiH. There are still a number of unfilled positions (30 as of September 2005) in some of the courts outside Sarajevo because of the ethnicity requirements: the position must be filled by a representative from a specified ethnic group, but no suitable candidates have come forward. Overall, as of December 31, 2004, there were 28 vacant judicial positions in BiH. In the course of 2005, 10 judges resigned, while a number of judges were appointed internally within the judiciary, to other courts of either the same or higher level. As a result, as of December 31, 2005, 17 judicial positions remained vacant. *See* HJPC ANNUAL REPORT 2005 at 15, 17, 20.

NUMBER OF JUDGES IN BiH AS OF FEBRUARY 2006

Court	Number of Judges
Court of BiH	**20**
RS Courts	**214**
Supreme Court	15
District Courts	57
Basic Courts	142
FBiH Courts	**441**
Supreme Court	22
Cantonal Courts	115
Municipal Courts	304
Brčko District Courts	**22**
TOTAL	**697**

Source: HJPC ANNUAL REPORT 2005 at 51-52.

It is not at all clear, however, that the number of judges is appropriate for future needs. The HJPC must continue to evaluate the demand for additional judges against budgetary constraints and caseload demands. The 2002-2003 restructuring balanced the expected level of demand under the judicial reforms with the existing level of cases. The IJC was deliberately conservative: given the desire to respect life tenures, they decided not to appoint judges based on current backlog, but instead assumed that current backlogs could be met through the use of reserve judges and existing judges working under improving conditions. Many judges and others feel that the reduction in the number of positions was premature given the inherited backlog. Although system restructuring and court automation are expected to have an impact over time, the existing backlog is still overwhelming in a number of courts.

CASELOADS AND BACKLOG IN BiH COURTS, 2005

Court	Backlog, Jan. 1, 2005	Cases Filed in 2005	Total Caseload	Cases Disposed in 2005	Backlog, Dec. 31, 2005
BiH Court	**170**	**3,584**	**3,754**	**1,856**	**1,898**
RS Courts	**150,022**	**165,602**	**315,624**	**175,871**	**139,752**
Supreme	4,860	1,771	6,631	2,752	3,878
District	15,484	19,556	35,040	23,328	11,712
Basic	129,678	144,275	273,953	149,791	124,162
FBiH Courts	**1,006,748**	**720,235**	**1,726,983**	**547,239**	**1,179,744**
Supreme	12,283	3,492	15,775	7,761	8,014
Cantonal	15,120	76,184	91,304	70,270	21,034
Municipal	979,345	640,559	1,619,904	469,208	1,150,696

Brčko District	**11,376**	**38,643**	**40,019**	**27,219**	**12,800**
Appellate	104	1,1160	1,264	1,014	250
Basic	11,272	27,483	38,755	26,205	12,550
TOTAL	**1,683,316**	**918,064**	**2,086,380**	**752,186**	**1,334,194**

Source: HJPC ANNUAL REPORT 2005 at 75.

In order to deal with the backlog problems, court presidents are actively seeking an increase in the use of reserve judges and judicial associates, who can handle smaller cases and help analyze other cases for judges. Per the HJPC Law, the HJPC is authorized to appoint reserve judge on a temporary basis, in order to assist the judiciary in reducing backlogs or where additional resources are required due to a prolonged absence of a judge. These appointments may be carried out upon application by the relevant court president, supported by evidence indicating the need and sufficient funding for the reserve judges. *See* art. 48. Judicial associates may conduct proceedings and decide in non-contentious, small claims and enforcement matters, as assigned by the relevant court president. They also assist judges in their work, analyze legal issues, prepare cases for trial, and perform other professional activities, independently or under the supervision and instruction of a judge. RS LAW ON COURTS art. 50. Unfortunately, the use of both resources has been constrained by lack of sufficient funding. Thus, the HJPC appointed 41 reserve judges in 2005; however, due to lack of resources, 12 of these judges appointed to the RS basic courts were unable to commence their duties. *See* HJPC ANNUAL REPORT 2005 at 18-19.

Other approaches to handling backlog are being explored, and the HJPC has a special task force dedicated to examining and addressing the backlog issues. In 2005, JSDP also began working on developing and implementing backlog reduction strategies as part of its model courts initiative. One option will not be used, however: there will be no significant increase in the number of judges with life tenure.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

Conclusion	***Correlation: Negative***	***Trend: ↔***
Case filing and tracking systems are under development, along with case management software, but are not yet installed in a substantial number of courts.		

Analysis/Background:

There are currently no uniform procedures for filing and tracking of cases among the courts, in part because they are under development. HJPC is charged with ensuring the uniformity of procedures and systems, an no court may adopt an automated case-tracking registration, tracking or related system without obtaining prior approval of the HJPC. HJPC LAW art. 17(24). Furthermore, USAID's FILE and JSDP programs are actively working with the model courts Banja Luka, Konjic, Mostar and Zenica to test, refine and introduce more efficient filing and tracking systems (both manual and automated), accompanied by case management software in several pilot courts. For example, pilot work in Mostar Cantonal Court includes electronic case filing by high-volume plaintiffs, such as utility companies. The pilot program is expected to produce a standardized system that can be implemented in all other courts, with variations and modifications as needed for appellate or specialized courts.

In the meantime, most courts continue to use various systems dominated by manual entries of events. New cases are registered chronologically by the filing clerks, then forwarded to the court president for assignment according to the rules spelled out in Factor 18 above. A recent new measure to improve efficiency and uniformity and to provide more information on each case is the common case numbering system developed by JSDP and introduced by the HJPC for all courts in January 2006.

Tracking events and files continues to be problematic under the manual systems. Files are susceptible to misplacement, and some judges keep all active case files in their offices to ensure that they are not lost or tampered with. In the Enforcement Division of Sarajevo Municipal Court, utility claims have overwhelmed the system, so much so that a special room, known as the "shock room," has been designated for utilities enforcement claims, which now have a backlog of more than 700,000 cases.

Because cases are not effectively tracked, it is sometimes difficult to obtain an accurate picture of backlogs and active cases. Many cases have been abandoned during years of waiting and are no longer active, but are still on the books. Other cases can end up with double counting if they started in the Enforcement Division but were transferred to Civil Division due to defenses or protests, resulting in a new case number without elimination of the initial Enforcement Division number. Electronic case management systems will correct these problems.

Scheduling of hearings is beginning to improve. The radical change from an inquisitorial to an adversarial system is shifting the dynamics of scheduling, which have traditionally been beset by regular delays and rescheduling, so that even simple claims could take years to decide. Under the new system, endless hearings have been replaced with structured, scheduled pleadings, a preliminary hearing, and a single event trial. Failure to meet a deadline or attend a hearing without prior excuse can result in a default judgment or elimination of any evidence or arguments that might have been presented in the missed event. As a result, lawyers are keeping to timelines more effectively when judges enforce the rules. Not all judges have shifted to the new system, however. As one judge noted, "I cannot penalize them for missing deadlines when sometimes I miss deadlines too." Installation of the electronic case filing and tracking systems will soon provide information on judicial performance, allowing court presidents to insist that their judges abandon such misguided notions of fairness and enforce the new laws for effectiveness.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

Conclusion	***Correlation: Neutral***	***Trend: ↑***

The judicial system is sufficiently equipped with the needed computer hardware and other equipment, but still awaits case management software, which is under development. Users are not yet sufficiently skilled in the use of their new equipment.

Analysis/Background:

Equipping the courts of BiH with computers and supporting equipment is estimated to be 80-90% complete, thanks in large part to funding from the donor community. Court presidents expressed strong satisfaction with the overall level of these commodities. Much work is still needed, however, before the new equipment will bring about improved performance.

Case management software is currently being developed in four pilot courts, and is scheduled to be rolled out to other courts in the course of 2006. At present, computers are equipped with standard word processing, spreadsheet and database software only.

Substantial training on the use of available equipment is needed. Many respondents noted that a substantial number of judges and court staff use their computers as "glorified typewriters," having had little or no training in word processing or electronic file management. As a consequence, provision of computers has not yet had a significant positive impact on the efficiency of many recipients.

Computers, for the most part, are not yet networked, and many do not have Internet access. Accordingly, file sharing, development of standardized forms, and electronic transfer of files is limited.

Management of the new computerized systems has not been settled. Judges are discussing with the HJPC whether the HJPC should have a permanent IT staff to service the overall system, or whether each court should have IT personnel. Judges would prefer to see a centralized function because of budgetary constraints on court staffing.

An outstanding concern is the fact that equipping the judiciary with computers and other equipment is almost completely dependent on foreign donors. Arrangements will need to be made to provide for local support of maintenance and replacement of the existing equipment.

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.

Conclusion	***Correlation: Neutral***	***Trend: ↑***
Judges receive current domestic laws and jurisprudence as published, but there is no national system for indexing changes in the law.		

Analysis/Background:

Distribution of laws has substantially improved since the 2001 JRI. Today, judges uniformly agree that they receive new laws in a timely fashion through court subscriptions to the existing Official Gazettes, which publish all laws. On the other hand, most judges and other legal professionals complain that there is insufficient notice of legislative reforms, so that they are too often surprised by unexpected amendments or new legislation.

Indexing of laws is less satisfactory. Laws are published chronologically, without any meaningful subject matter index. In addition, the multitude of changes in the past ten years has resulted in a fragmented collection, with numerous small amendments for various codes that are not captured through any effective system of compilation. Many laws are in need of republication and restatement. A number of practitioners maintain personally annotated collections of legislation, but few judges or courts have the time or resources to create or maintain such annotations. A project sponsored by the UNDP is developing a system of legal indexing, but it is not yet in place.

Jurisprudence and other legal commentary are still in short supply. There is an expressed need for commentary on the new laws, either through provision of legal materials from other countries addressing similar laws or through development of commentaries on reforms unique to BiH. In

2005, the Council of Europe sponsored the publication of commentaries on the Criminal Code, the Codes of Civil Procedure and the Laws on Enforcement of Judgments, which have been well received. Likewise, the JPTCs are beginning to develop useful practical materials. However, there is demand for much more.

List of Acronyms

ABA/CEELI	American Bar Association's Central European and Eurasian Law Initiative
BiH	Bosnia and Herzegovina
ECHR	European Convention on Human Rights and Fundamental Freedoms
FBiH	Federation of Bosnia and Herzegovina
FILE	Fostering an Investment and Lender-Friendly Environment program
FOIA	Freedom of Information Act
HJPC	High Judicial and Prosecutorial Council
HR	High Representative
IJC	Independent Judicial Commission
JPTC	Judicial and Prosecutorial Training Center
JRI	Judicial Reform Index
JSDP	Judicial Sector Development Project
ODC	Office of Disciplinary Counsel
O.G. BiH	Official Gazette of Bosnia and Herzegovina
O.G. FBiH	Official Gazette of the Federation of Bosnia and Herzegovina
O.G.R.S.	Official Gazette of the Republika Srpska
O.G. SRBiH	Official Gazette of the Socialist Republic of Bosnia and Herzegovina
OHR	Office of the High Representative
RS	Republika Srpska
SFRY	Socialist Federal Republic of Yugoslavia
UNDP	United Nations Development Program
USAID	United States Agency for International Development